

1 UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
3 Civil Action Number 06-CV-2621 LTS (DFE)
4

5 - - - - -
6 SECURITIES AND EXCHANGE COMMISSION :
7 Plaintiff, :
8 vs. :
9 ANDREAS BADIAN, et al., :
10 Defendants. :
11 - - - - -

12

13

14 Tuesday, March 2, 2010

15 10:18 a.m.
16

17 Videotaped Deposition of TSVETAN
18 BELORESHKI, taken by Plaintiff, pursuant to Notice,
19 held at the offices of The Securities and Exchange
20 Commission, Three World Financial Center, New York,
21 New York, before Patricia Mulligan Carruthers,
22 Certified Shorthand Reporter and Notary Public of the
23 State of New Jersey and Notary Public of the State of
24 New York.

25

Tsvetan Beloreshki

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New York, NY

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6	100 F Street, N.E.	6	
7	Washington, D.C. 20549	7	
8	(202) 551-4480	8	EXHIBITS
9	guidok@sec.gov	9	PROWSE BELORESHKI
10	BY: KENNETH GUIDO, ESQ.	10	NUMBER DESCRIPTION PAGE
11	Assistant Chief Litigation Counsel	11	
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13	DLA PIPER US, LLP	13	(No Bates)
14	Attorneys for Defendant Andreas Badian	14	2 FTI Web Site Printout 7
15	1251 Avenue of the Americas	15	(No Bates)
16	New York, New York 10020-1104	16	3 Rhino "Analysis of Trading in the 7
17	(212) 335-4500	17	Stock of Sedona Corporation
18	joshua.sohn@dlapiper.com	18	(No Bates)
19	megan.vesely@dlapiper.com	19	4 Expert Report of S. Prowse, 7
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21	MEGAN K. VESELY, ESQ.	21	(No Bates)
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1	E X H I B I T S			1	T. Beloreshki - Direct		
2	PROWSE BELORESHKI			2	Megan Vesely. We represent Andreas Badian and the		
3	NUMBER	DESCRIPTION	PAGE	3	witness in this proceeding.		
4	14	Spreadsheet	229	4	T S V E T A N B E L O R E S H K I		
5		(BP00004.xls, Tab: Exhibit 13b)		5	65 Burnett Terrace,		
6	15	"Exhibit 11, Regression Analysis	246	6	Maplewood, New Jersey 07040,		
7		3/1/2001 - 4/30/2001		7	having been first duly sworn according		
8		(BP00006.xls, Tab: Old Exhibit 11)		8	to law, testifies as follows:		
9	16	"Summary Output"	267	9	EXAMINATION BY MR. GUIDO:		
10		BP6 TAB: REG #1		10	Q. State your full name for the record again		
11	17	"Summary Output"	267	11	please.		
12		BP6 TAB: REG #2		12	A. Sure. It's Tsvetan Beloreshki.		
13	18	"Summary Output"	267	13	Q. And where are you employed?		
14		BP6 TAB: REG #3		14	A. I'm employed at FTI Consulting in New		
15	19	"Summary Output"	268	15	York.		
16		BP6 TAB: REG #4		16	Q. And what is your position at FTI		
17	20	"Summary Output"	268	17	Consulting?		
18		BP6 TAB: REG #5		18	A. Currently I'm a senior managing director		
19				19	at FTI.		
20				20	Q. How long have you held that position?		
21				21	A. Since the beginning of the year.		
22				22	Q. Since the beginning of 2010?		
23				23	A. Correct.		
24				24	Q. Okay. Prior to that, what position did		
25				25	you hold with FTI?		

Page 7				Page 9			
1	T. Beloreshki - Direct			1	T. Beloreshki - Direct		
2	(Whereupon, Exhibits Prowse Beloreshki-1			2	A. I was a managing director.		
3	through Prowse Beloreshki-4 are marked for			3	Q. You were a managing director. And how		
4	identification by the reporter.)			4	long did you hold that position?		
5	THE VIDEOGRAPHER: Good morning. We're			5	A. Two years would be my best guess.		
6	now on the record in the matter of the Securities and			6	Q. And -- and prior to that --		
7	Exchange Commission versus Andreas Badian, et al., in			7	A. I was just a director. I was just a		
8	the Southern District of New York, Civil Action 06 CV			8	director.		
9	2621 LTS. Today is March the 2nd, 2010, and the time			9	Q. Prior to that, how long were you just a		
10	on the monitor is 10:18 a.m. This is the video			10	director?		
11	recorded deposition of Mr. Tsvetan Beloreshki being			11	A. Probably about a year-and-a-half.		
12	held at the SEC offices, Three World Financial			12	Something of that nature.		
13	Center, New York City.			13	Q. Okay. And then prior to that, what was		
14	I am the videographer. My name is Terry			14	your position?		
15	Carruthers from Alderson Court Reporting with offices			15	A. Prior to that, I was with Deloitte &		
16	in Washington, D.C. Our court reporter is Patricia			16	Touche.		
17	Mulligan.			17	Q. So you first joined FTI as a director. Is		
18	Will all counsel please state their			18	that correct?		
19	appearances for the record, after which our court			19	A. Correct.		
20	reporter will please administer the oath.			20	Q. And what year did you join FTI?		
21	MR. GUIDO: My name is Kenneth Guido. I			21	A. May 1st, 2006, I believe.		
22	represent the Securities and Exchange Commission.			22	Q. Okay. So you've been there		
23	I'm accompanied by Mr. Lawrence Glosten and			23	approximately --		
24	Mr. Charles Jones, as well as Mr. Fred Dunbar.			24	A. Coming on four years.		
25	MR. SOHN: Joshua Sohn from DLA Piper with			25	Q. Coming on four years.		

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<p>1 T. Beloreshki - Direct</p> <p>2 And how long were you with Deloitte?</p> <p>3 A. A year to the day.</p> <p>4 Q. A year.</p> <p>5 And prior to Deloitte -- Well, what did</p> <p>6 you do at Deloitte?</p> <p>7 A. I was performing tasks and functions that</p> <p>8 were largely consistent with what I had been doing in</p> <p>9 my consulting practice, which is securities</p> <p>10 litigation.</p> <p>11 Q. Pardon?</p> <p>12 A. I was working very much along the same</p> <p>13 lines as I did with -- with my consulting practice,</p> <p>14 which is securities litigation, financial markets,</p> <p>15 investigations, this sort of work.</p> <p>16 Q. And prior to that, where were you</p> <p>17 employed?</p> <p>18 A. Prior to that, I was employed at National</p> <p>19 Economic Research Associates, and I believe they go</p> <p>20 by NERA Economic Consulting.</p> <p>21 Q. How long were you there?</p> <p>22 A. Six years to the day.</p> <p>23 Q. And what did you do at NERA consulting?</p> <p>24 A. I was with the finance and securities</p> <p>25 litigation group at NERA. So I was involved in</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. Well, thankfully I left early on, so I</p> <p>3 hope I'm clean on that.</p> <p>4 But I traded bonds. I traded loans. I</p> <p>5 traded Euro bonds. And now we go into the</p> <p>6 derivatives land, we're talking credit-linked notes,</p> <p>7 quanto options, credit default swaps. Sorry. Things</p> <p>8 like that.</p> <p>9 Q. So did you trade any convertible</p> <p>10 debentures?</p> <p>11 A. We did trade bonds that had various types</p> <p>12 of optionalities, whether they were, portable or</p> <p>13 whether they had facets to them that made them</p> <p>14 convertible into other securities, as well as some of</p> <p>15 those options had warrants based on even some other</p> <p>16 underlying like the price of oil.</p> <p>17 Q. So were any of those futures price</p> <p>18 securities?</p> <p>19 A. No. The answer is no.</p> <p>20 Q. And is the convertible debenture that's at</p> <p>21 issue in this case a futures price security?</p> <p>22 A. Yes.</p> <p>23 Q. Now, have you had an opportunity to review</p> <p>24 Exhibit Number 1, which is the complaint?</p> <p>25 A. Yes. Yes.</p>
Page 11	Page 13
<p>1 T. Beloreshki - Direct</p> <p>2 various investigations, securities litigation</p> <p>3 projects, research projects over the course of time,</p> <p>4 and I would say that probably the one thing that</p> <p>5 distinguishes what I do versus the general practice</p> <p>6 is my work tended to be a little more on the</p> <p>7 derivatives.</p> <p>8 Q. Pardon?</p> <p>9 A. My work tends to be a little bit more in</p> <p>10 the derivatives part of the securities market.</p> <p>11 Q. When you were with NERA?</p> <p>12 A. Throughout my career.</p> <p>13 Q. Okay. Is a convertible debenture a</p> <p>14 derivative?</p> <p>15 A. Yes.</p> <p>16 Q. And prior to NERA, what did you do?</p> <p>17 A. I was with Banque Paribas in London and</p> <p>18 New York.</p> <p>19 Q. What did you do there?</p> <p>20 A. I was a trader and a structurer in their</p> <p>21 structured products desk.</p> <p>22 Q. What sort of projects did you structure?</p> <p>23 A. All the ones that you're investigating</p> <p>24 these days.</p> <p>25 Q. Well, and that's the next wave.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. What is your understanding of the -- of</p> <p>3 the time frame that was the manipulation alleged in</p> <p>4 that case?</p> <p>5 MR. SOHN: You mean in the complaint?</p> <p>6 MR. GUIDO: In the complaint.</p> <p>7 A. The complaint, at least the way I read it,</p> <p>8 is not entirely clear on the time frame that a</p> <p>9 manipulation is being alleged. There are a number of</p> <p>10 time frames that are used in the complaint, and that</p> <p>11 led to a substantial uncertainty, at least in my</p> <p>12 mind.</p> <p>13 Q. Okay. So you led -- it led you to</p> <p>14 uncertainty?</p> <p>15 A. In terms of what the allegation is.</p> <p>16 Q. Did it lead you to conclude that it seemed</p> <p>17 to be alleging different time frames?</p> <p>18 MR. SOHN: Objection to form.</p> <p>19 A. All I can say is there are different time</p> <p>20 frames that are referenced in the complaint.</p> <p>21 Q. Okay. And when were those time frames</p> <p>22 referenced, the different time frames, as you read</p> <p>23 the complaint?</p> <p>24 A. Sure.</p> <p>25 Q. Do you remember without reviewing the</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 document?</p> <p>3 A. Yes.</p> <p>4 Q. Just based on your --</p> <p>5 A. Certainly.</p> <p>6 There was a reference as to the month of</p> <p>7 March. There was a reference as to the period from</p> <p>8 March 1st through March 23rd. There is a reference</p> <p>9 to the period, I believe, January 26th through</p> <p>10 March 23rd. I also believe there's a reference to</p> <p>11 the period between March 1st to March 29. And I'm</p> <p>12 quite certain there are references in terms of April.</p> <p>13 Q. Pardon?</p> <p>14 A. There are references, I believe, in terms</p> <p>15 of the month -- of the month of April.</p> <p>16 Q. Were there any references to the month of</p> <p>17 May?</p> <p>18 MR. SOHN: You're asking if he remembers?</p> <p>19 MR. GUIDO: Yes.</p> <p>20 A. I don't recall.</p> <p>21 Q. Okay. Were there any references to any</p> <p>22 time periods in the Year 2000?</p> <p>23 A. I don't recall.</p> <p>24 Q. Were there any references to any time</p> <p>25 periods after May of 2001?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. Does it make any references to the time</p> <p>3 period after May of 2001?</p> <p>4 A. It does in Paragraph 43.</p> <p>5 Q. What's it say?</p> <p>6 A. On June 17, 2002, pursuant to Section</p> <p>7 21(a)(1) of the Exchange Act, the commission issued</p> <p>8 an order, and so forth.</p> <p>9 Q. Okay. Now, my question, I think, when I</p> <p>10 started this is does it make any reference to trading</p> <p>11 during particular time periods? Does it make any</p> <p>12 reference to any trading after May of 2001?</p> <p>13 A. Actually, it does. I'll complete the</p> <p>14 sentence I was reading. I apologize.</p> <p>15 "On June 17, 2002, pursuant to</p> <p>16 Section 21(a) 1 of the Exchange Act, the commission</p> <p>17 issued an order requiring Pond to file a statement</p> <p>18 under oath as to all the facts and circumstances</p> <p>19 concerning its trading in Sedona stock."</p> <p>20 Q. Okay. Where does that make any reference</p> <p>21 to trading that occurred after May 31st?</p> <p>22 MR. SOHN: Objection.</p> <p>23 Q. You may answer the question.</p> <p>24 A. This is an order that was issued in June</p> <p>25 of 2002. So the logical inference, at least in my</p>
Page 15	Page 17
<p>1 T. Beloreshki - Direct</p> <p>2 A. I don't recall.</p> <p>3 Q. Will you take a look at the complaint?</p> <p>4 A. Yes.</p> <p>5 Q. With regard to both of my questions, are</p> <p>6 there any references in that complaint with regard to</p> <p>7 the time period 2000?</p> <p>8 A. Well ...</p> <p>9 MR. SOHN: Just to be clear, the question</p> <p>10 is whether there are references in the complaint to</p> <p>11 anything in 2000?</p> <p>12 MR. GUIDO: The trading time period 2000.</p> <p>13 A. There's a reference as to November, 2000</p> <p>14 in Paragraph 24.</p> <p>15 Q. Does that refer to trading?</p> <p>16 A. It refers to -- and I'll read it.</p> <p>17 In November, 2000, Rhino helped its client</p> <p>18 Amro convertible debentures with Sedona.</p> <p>19 Q. Okay.</p> <p>20 A. That's probably about it.</p> <p>21 Q. Pardon?</p> <p>22 MR. SOHN: He's asking you to review the</p> <p>23 complaint. Take your time.</p> <p>24 Q. You've reviewed the complaint?</p> <p>25 A. Yes.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 mind, is that this would entail trading done prior to</p> <p>3 June of 2002.</p> <p>4 Q. Well, does it allege that Rhino or someone</p> <p>5 engaged in any trading subsequent to May 31, 2001?</p> <p>6 MR. SOHN: I object to this whole line of</p> <p>7 questioning. You're asking him to characterize</p> <p>8 what's in your --</p> <p>9 MR. GUIDO: His understanding of the</p> <p>10 complaint.</p> <p>11 A. All I can say is that there are references</p> <p>12 in the complaint as to periods both before March and</p> <p>13 after May of 2001.</p> <p>14 Q. Trading before March and trading after</p> <p>15 May 31st --</p> <p>16 A. Correct.</p> <p>17 Q. -- 2001?</p> <p>18 A. Yes.</p> <p>19 Q. Where is the specific reference in that</p> <p>20 complaint to any trade that occurred after May 31,</p> <p>21 2001?</p> <p>22 A. Correct me if I'm misreading this --</p> <p>23 this -- this sentence, sir, but the SEC issued an</p> <p>24 order in June of 2002 requiring an entity to produce</p> <p>25 its record concerning its trading in Sedona stock.</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 That in my mind means trading performed after June of</p> <p>3 2002.</p> <p>4 Q. Have you ever looked at the Pond trade</p> <p>5 tickets?</p> <p>6 A. I don't recall. No.</p> <p>7 Q. In fact, you didn't, did you?</p> <p>8 A. I don't recall seeing those.</p> <p>9 Q. Okay. Did you ever look at any of the</p> <p>10 Pond propriety account account statements?</p> <p>11 A. I don't recall seeing those.</p> <p>12 Q. Okay. We'll get into this in a little</p> <p>13 more detail. I'd like you to take a look at Exhibit</p> <p>14 Number 2.</p> <p>15 A. Yes. Yes, sir.</p> <p>16 Q. Exhibit Number 2 is a printout from the</p> <p>17 FBI web site, your profile that appears there.</p> <p>18 Do you recognize that?</p> <p>19 A. Yes.</p> <p>20 Q. Hmm?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Now, this sort of sets out a bit</p> <p>23 about what you testified to, and I want to clarify</p> <p>24 some things about your testimony.</p> <p>25 You said that you were in the litigation</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. Actually, it was commissioned by the Bond</p> <p>3 Market Association and it was a study that -- that</p> <p>4 compared the practices and outcomes of the rating</p> <p>5 agency's actions vis-a-vis structured finance</p> <p>6 instruments.</p> <p>7 Q. And who requested that?</p> <p>8 A. I believe the study was commissioned by</p> <p>9 the Bond Market Association.</p> <p>10 Q. And what was the purpose of the study?</p> <p>11 A. At the time there was a controversy in the</p> <p>12 structured finance community related to the practice</p> <p>13 of notching.</p> <p>14 Q. Practice of what?</p> <p>15 A. Notching.</p> <p>16 Q. N-O-T-C-H-I-N-G?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 A. It relates to the fact that if I'm an</p> <p>20 issuer of a bond, say I'm a corporate issuer of a</p> <p>21 bond, and I would like that bond to be well-placed</p> <p>22 and issued at a decently low yield, then it would be</p> <p>23 a good thing for me to have that bond placed not only</p> <p>24 with retail investors or institutional investors, but</p> <p>25 attach another customer base -- attract another</p>
Page 19	Page 21
<p>1 T. Beloreshki - Direct</p> <p>2 and finance group at NERA. Is that what you called</p> <p>3 it?</p> <p>4 A. It was the securities practice at NERA.</p> <p>5 If I'm incorrect on the name, I'm sure that Fred will</p> <p>6 correct me.</p> <p>7 Q. Pardon?</p> <p>8 A. I may be incorrect on the name, but it was</p> <p>9 the securities practice of NERA who's -- a</p> <p>10 significant portion of the work we did that related</p> <p>11 to securities litigation.</p> <p>12 Q. Okay. And was it primarily focused on</p> <p>13 securities litigation?</p> <p>14 A. Primarily. I'm not entirely comfortable</p> <p>15 with characterizing it as primarily, but there was</p> <p>16 substantial work done in securities litigation.</p> <p>17 Q. Well, did it do anything other than</p> <p>18 securities litigation?</p> <p>19 A. Yes.</p> <p>20 Q. What?</p> <p>21 A. For example, we were requested to do a</p> <p>22 number of studies for various market producers. One</p> <p>23 of those is actually on my CV of a rather large scale</p> <p>24 study performed for the rating agencies.</p> <p>25 Q. For what?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 customer base which would be investors in structured</p> <p>3 finance instruments like, for example, CDOs.</p> <p>4 And the problem with that is that if my</p> <p>5 bond doesn't carry, say, Moody's rating and I would</p> <p>6 like it to be included or structure would like --</p> <p>7 would like that bond to be included in a CDO that is</p> <p>8 to be rated by Moody's, Moody's would not typically</p> <p>9 assign that bond the rating that it has been given by</p> <p>10 another rating agency simply because Moody's would in</p> <p>11 its own judgement determine that a rating given by,</p> <p>12 say, S&P is not necessarily commensurate with its own</p> <p>13 standards, and even more severely the same goes with</p> <p>14 Fitch.</p> <p>15 To give you a sense of that, if a bond is</p> <p>16 rated, say, AA by -- by Fitch, Moody's may decide for</p> <p>17 the purposes of including that bond into a</p> <p>18 securitization, it will rate it as a BBB. That would</p> <p>19 be an effective downgrade or notching by six notches,</p> <p>20 and it was something that there was quite a bit of</p> <p>21 debate in the industry about. It was a very large</p> <p>22 scale study, probably 200-plus pages, at least six</p> <p>23 months to complete.</p> <p>24 Q. Now, what other studies other than</p> <p>25 litigation did you participate in?</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 A. Another one that comes to mind -- and that</p> <p>3 is not on my CV because I believe you requested -- it</p> <p>4 was confidential. We performed a study for a rating</p> <p>5 agency, one of the major three, related to its</p> <p>6 practices of rating municipal issues.</p> <p>7 Q. And why were you asked to do that?</p> <p>8 A. To the best of my recollection, it was an</p> <p>9 internal effort on the part of the rating agency to</p> <p>10 compare its rating policies versus competitors.</p> <p>11 Q. And why were you asked to do that?</p> <p>12 MR. SOHN: The question is why was he</p> <p>13 retained to do that?</p> <p>14 MR. GUIDO: Yes.</p> <p>15 A. I -- I don't know all the variables that</p> <p>16 may have entered into the decision to retain NERA.</p> <p>17 Presumably we were good enough to -- to work on it.</p> <p>18 Q. I understand. I wasn't asking -- I'm</p> <p>19 asking you what the rating agency -- why the rating</p> <p>20 agency had to have that study done.</p> <p>21 A. To the best of my recollection, again, I</p> <p>22 believe it was of interest to the rating agency to</p> <p>23 see how its ratings compared with ratings given by</p> <p>24 other rating agencies.</p> <p>25 Q. So were you told at the time that</p>	<p>1 T. Beloreshki - Direct</p> <p>2 don't remember exact detail --</p> <p>3 Q. Was it to resolve a dispute with someone?</p> <p>4 A. I don't believe it was a dispute. I -- I</p> <p>5 believe -- And I don't know exactly, but I believe</p> <p>6 you had to file a document with the September 11th</p> <p>7 Commission as to what your claim is. So if this is a</p> <p>8 dispute, so be it.</p> <p>9 So, again, valuation -- We would perform</p> <p>10 valuations there. And let me come a little closer in</p> <p>11 time because my memory is much fresher.</p> <p>12 Here we perform various litigations,</p> <p>13 various investigations and quite a bit of work that</p> <p>14 is outside of both litigation and investigations.</p> <p>15 Q. Okay. Let's -- let's narrow it down a</p> <p>16 little bit. What's a future price security?</p> <p>17 A. What's a future price security? A future</p> <p>18 price security is a convertible instrument whose</p> <p>19 conversion -- conversion features depend on the price</p> <p>20 of the underlying equity at some future point in</p> <p>21 time.</p> <p>22 Q. And does the -- the future price relate to</p> <p>23 the conversion of that security into some other</p> <p>24 instrument?</p> <p>25 A. Typically -- yes, typically into the</p>
Page 23	Page 25
<p>1 T. Beloreshki - Direct</p> <p>2 questions had been raised by regulators about the</p> <p>3 quality of the ratings of the rating agencies?</p> <p>4 A. No. No. I do not believe there was a</p> <p>5 regulatory angle or a litigation angle to that.</p> <p>6 Q. Okay. All right. Anything else that you</p> <p>7 worked on that didn't have a litigation or a</p> <p>8 regulatory angle?</p> <p>9 MR. SOHN: While he was at NERA?</p> <p>10 MR. GUIDO: Hmm?</p> <p>11 MR. SOHN: While he was at NERA or ever?</p> <p>12 Q. Well, why don't we just jump ahead and say</p> <p>13 "ever."</p> <p>14 A. Quite a bit. I was still with NERA. I</p> <p>15 did -- I did valuation projects there -- I did</p> <p>16 valuation projects, including for convertible</p> <p>17 securities. I did -- I filed an affidavit for the</p> <p>18 September 11th Fund.</p> <p>19 Q. Excuse me. An affidavit?</p> <p>20 A. Yeah. Probably --</p> <p>21 Q. An affidavit?</p> <p>22 A. No, no. It -- I believe it was -- if</p> <p>23 memory serves me well, it was filed on behalf of a</p> <p>24 widow of a victim of September 11th, valuing the --</p> <p>25 whatever options he may have had at some point. I</p>	<p>1 T. Beloreshki - Direct</p> <p>2 underlying stock.</p> <p>3 Q. Okay. So with regard to future price</p> <p>4 security the way you've defined it, have you done any</p> <p>5 work in the time you were at NERA through the time</p> <p>6 that you've been at FTI unrelated to litigation or</p> <p>7 investigations with regard to the economic</p> <p>8 characteristics of future price securities?</p> <p>9 A. One thing that comes to mind is the paper</p> <p>10 that we put out there probably at some point in 2003.</p> <p>11 Q. The paper that you wrote with Caryn</p> <p>12 Schechtman?</p> <p>13 A. She was one of the authors, yes.</p> <p>14 Q. Anything other than that paper?</p> <p>15 A. Nothing that comes to mind.</p> <p>16 MR. GUIDO: I would like to have marked as</p> <p>17 exhibit next number a paper called The Frontiers of</p> <p>18 Convertible Financing.</p> <p>19 MR. SOHN: Do you want this to be 3 or 5?</p> <p>20 MR. GUIDO: Next number 5.</p> <p>21 (Whereupon, Exhibit Prowse Beloreshki-5 is</p> <p>22 marked for identification by the reporter.)</p> <p>23 Q. Is Exhibit Number 5 the paper you just</p> <p>24 referred to?</p> <p>25 A. Yes, sir.</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 Q. Okay. And that was in July 30th, 2003.</p> <p>3 Correct?</p> <p>4 A. Yes.</p> <p>5 Q. How did it come about that you prepared</p> <p>6 that paper?</p> <p>7 A. I will not be exactly precise on the time</p> <p>8 frame, but probably 2000 or 2001, something in that</p> <p>9 range, NERA was retained to perform economic analyses</p> <p>10 related to future price securities. At the end of</p> <p>11 the day, we had to analyze a significant number of</p> <p>12 stock prices that presumably could have been part of</p> <p>13 a manipulation scheme. And based on these studies,</p> <p>14 at some point later, my understanding is -- and I'm</p> <p>15 not entirely certain about it -- that a colleague of</p> <p>16 mine Marcia Mayer submitted the report to the SEC</p> <p>17 summarizing the findings that we had at the time,</p> <p>18 so --</p> <p>19 Q. That was 2001?</p> <p>20 A. See, let me put it this way. I joined</p> <p>21 NERA in '99, and that work must have been done before</p> <p>22 the publication of this paper. So probably 2000,</p> <p>23 2001. That would be my best estimate.</p> <p>24 Q. Okay. So you did a study of various</p> <p>25 stocks for market manipulation that involved</p>	<p>1 T. Beloreshki - Direct</p> <p>2 MR. SOHN: Was what?</p> <p>3 MR. GUIDO: This study that he's referred</p> <p>4 to of the 50 securities.</p> <p>5 A. I don't recall that that is the natural</p> <p>6 inference, given that there was, I believe, a report</p> <p>7 to the SEC at some point.</p> <p>8 Q. Was there a formal order issued by the</p> <p>9 commission? Do you know?</p> <p>10 A. I don't know. I don't know.</p> <p>11 Q. Now -- So that study eventually resulted</p> <p>12 in the preparation of The Frontier of Convertible</p> <p>13 Financing?</p> <p>14 A. It was -- It formed at least a part of</p> <p>15 my -- I guess the intent to put -- put out a paper.</p> <p>16 Q. Okay. And was it a study of market</p> <p>17 manipulation?</p> <p>18 MR. SOHN: Was what a study of market</p> <p>19 manipulation?</p> <p>20 MR. GUIDO: The Morrison Foerster 50</p> <p>21 securities study.</p> <p>22 A. I'll characterize it rather as an</p> <p>23 investigation as to whether or not the transactions</p> <p>24 executed by a market participant, probably Thomson</p> <p>25 Kernaghan, had a material impact on the prices of the</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 convertible debentures --</p> <p>3 A. Future price securities. Yes.</p> <p>4 Q. Pardon?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And how many securities did you</p> <p>7 include in that study?</p> <p>8 A. At least 50. Perhaps more, but at least</p> <p>9 50.</p> <p>10 Q. And who retained NERA to do that?</p> <p>11 A. I believe the law firm was Morrison</p> <p>12 Foerster. I also believe that the ultimate client</p> <p>13 was Thomson Kernaghan.</p> <p>14 Q. Who?</p> <p>15 A. Thomson Kernaghan.</p> <p>16 Q. Could you spell it?</p> <p>17 A. T-H-O-M-S-O-N, K-E-R-N-A-G-H-A-N.</p> <p>18 Q. And what type of an attorney is that?</p> <p>19 A. I believe it was a Canadian brokerage.</p> <p>20 Q. Okay. And Morrison Foerster was a law</p> <p>21 firm based in San Francisco?</p> <p>22 A. New York. At least the attorneys we</p> <p>23 worked with was based in New York.</p> <p>24 Q. And was it in regard to an investigation</p> <p>25 of Thomson Kernaghan's activities by the SEC?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 various securities that they traded in.</p> <p>3 Q. You used the term "manipulation" when you</p> <p>4 first described it. Are you describing using the</p> <p>5 term "manipulation" -- Or when you use the term</p> <p>6 "manipulation," were you defining it as an activity</p> <p>7 that had an impact on the price of stock?</p> <p>8 MR. SOHN: Used manipulation when?</p> <p>9 MR. GUIDO: When he originally used the</p> <p>10 term "manipulation" when he described his study of</p> <p>11 the 50 securities.</p> <p>12 A. No. Again, the study was centered on</p> <p>13 whether or not the trading activities had an impact</p> <p>14 on the stock price. My understanding is that that is</p> <p>15 kind of first stepping stone in order for somebody to</p> <p>16 determine that manipulation.</p> <p>17 Q. Okay. And was one -- one of the questions</p> <p>18 that was asked by the Securities and Exchange</p> <p>19 Commission that led to the study is whether or not</p> <p>20 these 200 -- 200 or so -- or these 50 or so</p> <p>21 securities' stocks had been manipulated?</p> <p>22 A. I don't remember what the questions asked</p> <p>23 by the SEC were.</p> <p>24 Q. What happened to that study?</p> <p>25 A. I don't know. Again, my best</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 understanding is that Marcia Mayer, that she probably</p> <p>3 submitted that to the SEC, but I -- I don't know that</p> <p>4 for a fact. And I also know that at one point she</p> <p>5 presented -- made a presentation at one of NERA's</p> <p>6 annual conferences to clients related to future price</p> <p>7 securities.</p> <p>8 Q. Pardon?</p> <p>9 A. My recollection, also, is that Marcia</p> <p>10 Mayer made a presentation at one of NERA's annual</p> <p>11 conferences to clients related on the topic of future</p> <p>12 price securities.</p> <p>13 Q. Did you work on that?</p> <p>14 A. On the presentation?</p> <p>15 Q. Uh-huh.</p> <p>16 A. At the minimum -- My PowerPoint skills are</p> <p>17 not terribly good, but at the minimum it was informed</p> <p>18 by some of my thoughts.</p> <p>19 Q. Pardon?</p> <p>20 A. I was assisting Marcia to an extent in her</p> <p>21 work on that project. She was the senior on that</p> <p>22 project. So my assumption is some of my thoughts</p> <p>23 were part of that presentation.</p> <p>24 Q. Was that presentation about the impact on</p> <p>25 trading activity on prices of stock in future -- in</p>	<p>1 T. Beloreshki - Direct</p> <p>2 would assume some of my thoughts made their way into</p> <p>3 the presentation.</p> <p>4 Q. Okay. Any others, others prior to The</p> <p>5 Frontiers of Convertible Financing?</p> <p>6 MR. SOHN: Any other what?</p> <p>7 MR. GUIDO: Any other presentations.</p> <p>8 MR. SOHN: About?</p> <p>9 MR. GUIDO: That led to The Frontiers of</p> <p>10 Convertible Financing.</p> <p>11 MR. SOHN: Objection. I think it</p> <p>12 mischaracterizes the causation.</p> <p>13 A. This paper were -- were my desire at the</p> <p>14 time, I guess, to --</p> <p>15 Q. Which paper are you referring to?</p> <p>16 A. To write The Frontiers piece was driven,</p> <p>17 A, by my knowledge in the area of securities,</p> <p>18 derivative securities; B, by my experience dealing</p> <p>19 with -- with future price securities, and perhaps my</p> <p>20 desire to share that knowledge to the extent that</p> <p>21 I -- perhaps the marketplace -- it would have been</p> <p>22 useful to have a piece that describes the salient</p> <p>23 characteristics of these securities and the various</p> <p>24 risks that market participants should keep in mind</p> <p>25 when dealing with them, so that's probably the</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 future price securities?</p> <p>3 A. I don't remember. It was a</p> <p>4 presentation -- All I can remember is it was a</p> <p>5 presentation that derived, at least to a degree, on</p> <p>6 our -- from our work in this area.</p> <p>7 Q. Okay. And in that study, you said it was</p> <p>8 a presentation to clients. Am I incorrect?</p> <p>9 A. You -- you are correct. In addition to</p> <p>10 clients, I don't know who the audience were, but</p> <p>11 typically there may even be regulators and judges</p> <p>12 and -- you know, other than clients.</p> <p>13 Q. Pardon?</p> <p>14 A. There may be people other than clients in</p> <p>15 the audience. There may be regulators or judges,</p> <p>16 these sort of an audience.</p> <p>17 Q. Well, in the paper that was presented, did</p> <p>18 you participate in preparing it?</p> <p>19 A. No. No. No. Marcia made the</p> <p>20 presentation. I was not in attendance at that</p> <p>21 conference.</p> <p>22 Q. But she made a presentation in which you</p> <p>23 helped prepare?</p> <p>24 A. I'm reluctant to agree on the "helped</p> <p>25 prepare." I'm perfectly comfortable saying that I</p>	<p>1 T. Beloreshki - Direct</p> <p>2 impetus or the -- the idea behind why I ended up</p> <p>3 writing this.</p> <p>4 Q. Well, is this article directed on advising</p> <p>5 people on how to hedge future price securities?</p> <p>6 A. It was not meant as an advice piece.</p> <p>7 Q. Okay. So it wasn't an advice piece on how</p> <p>8 to hedge?</p> <p>9 A. I don't presume to advise people on how to</p> <p>10 hedge.</p> <p>11 Q. In fact, wasn't it a piece to explain to</p> <p>12 people how to defend securities litigation when the</p> <p>13 allegation is market manipulation?</p> <p>14 A. That was not my intent in writing this</p> <p>15 piece. It was drawing on my knowledge in structured</p> <p>16 finance as a trader and in understanding the</p> <p>17 securities and providing that knowledge, you know,</p> <p>18 hopefully in a reasonably organized way so somebody</p> <p>19 could read it and hopefully get a better</p> <p>20 understanding of these type of product and how it</p> <p>21 would be traded.</p> <p>22 Q. Well, look at the first paragraph. Okay?</p> <p>23 The second sentence says, "The authors argue that the</p> <p>24 market underperformance and corporate failures</p> <p>25 frequently associated with the issuance of future</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 price securities cannot in themselves be interpreted</p> <p>3 as evidence of either inherent flaws in the future</p> <p>4 price securities contract design or market</p> <p>5 manipulation on the part of future price securities</p> <p>6 holders."</p> <p>7 Isn't that a statement that this is to</p> <p>8 explain how you would approach analyzing future price</p> <p>9 securities in a litigation context?</p> <p>10 A. Look, given that this is the area I work</p> <p>11 with, I guess at least some of my thinking was tinged</p> <p>12 about how one would approach this in a litigation</p> <p>13 context. That said, the major discussion or debate,</p> <p>14 at least at the time, related to these securities was</p> <p>15 whether the declines in the stock price that was</p> <p>16 typically associated with those securities was due to</p> <p>17 the characteristics of the company issuers themselves</p> <p>18 or whether those were precipitated by something that</p> <p>19 was inherent in the contract of issuing future price</p> <p>20 securities.</p> <p>21 So my opinion at the time, and it still</p> <p>22 is, is that this is not a flaw in the contract or the</p> <p>23 contractual design. Rather, it is a flaw with the</p> <p>24 performance of the common issuers, at least in</p> <p>25 general.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. Okay. Now, in the context of</p> <p>3 litigation --</p> <p>4 A. Yes.</p> <p>5 Q. -- have you presented any reports, papers,</p> <p>6 analyses on the characteristics of future price</p> <p>7 securities?</p> <p>8 A. Yes.</p> <p>9 Q. And what was that?</p> <p>10 A. I was deposed in the -- the matter</p> <p>11 involving Internet Law Library. Don't know if there</p> <p>12 was an expert report there.</p> <p>13 Q. Was there an expert report?</p> <p>14 A. Can I have a look at my CV?</p> <p>15 Q. Why don't you pull out your report, which</p> <p>16 is -- is it 4?</p> <p>17 A. 4, yes.</p> <p>18 Q. Okay. You recognize that 4 is the report</p> <p>19 that you prepared in this case?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 A. Okay. I'll go through Exhibit --</p> <p>23 Q. 2.</p> <p>24 A. -- 2 of that report and try to identify</p> <p>25 the matters that are related to future price</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 Q. Could I see Exhibit Number 1 back, please?</p> <p>3 I'm sorry. Exhibit Number 5. I think this has two</p> <p>4 exhibits included in it.</p> <p>5 (Whereupon, a discussion is held off the</p> <p>6 record.)</p> <p>7 Q. Now, you prepared this report, and the --</p> <p>8 Did you prepare any other analysis of the</p> <p>9 characteristics of future price securities that you</p> <p>10 made in presentations?</p> <p>11 MR. SOHN: Can we frame this -- Ever?</p> <p>12 MR. GUIDO: Ever.</p> <p>13 MR. SOHN: And outside of the litigation</p> <p>14 or in the litigation or in the world?</p> <p>15 MR. GUIDO: Outside of the litigation.</p> <p>16 MR. SOHN: Did you hear the question?</p> <p>17 A. I apologize. Could you please give me the</p> <p>18 question again? I apologize.</p> <p>19 Q. Sure.</p> <p>20 Have you ever presented any papers on the</p> <p>21 characteristics of future price securities in the</p> <p>22 context other than litigation?</p> <p>23 A. I don't believe that outside of this piece</p> <p>24 I have another paper or even a presentation on that</p> <p>25 subject.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 securities.</p> <p>3 So one is at the bottom of Page 2,</p> <p>4 Internet Law Library v. Southridge. And, yes, there</p> <p>5 was an expert report and deposition testimony.</p> <p>6 Q. Pardon?</p> <p>7 A. There was an expert report and deposition</p> <p>8 testimony in that matter.</p> <p>9 Q. Okay. Did that involve allegations of</p> <p>10 market manipulation?</p> <p>11 A. To the best of my recollection, yes.</p> <p>12 The next item, Cootes Drive versus</p> <p>13 Internet Law Library, there's a declaration there.</p> <p>14 Q. Did that involve allegations of market</p> <p>15 manipulation?</p> <p>16 A. You know, I'm not so -- again, same</p> <p>17 answer. To the best of my recollection, yes.</p> <p>18 Q. Okay.</p> <p>19 A. I was going to skip that one.</p> <p>20 SEC versus Nelson Obus. I apologize.</p> <p>21 This is the -- the bottom one on Page 3.</p> <p>22 Q. Bottom of 3. Okay.</p> <p>23 And that involved market manipulation?</p> <p>24 A. No.</p> <p>25 Q. That was an insider trading case --</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 A. Yeah, I believe it was an insider trading</p> <p>3 case.</p> <p>4 The next one I see is on Page 4, which is</p> <p>5 Pet Quarters v. Thomas Badian.</p> <p>6 And that's all I see.</p> <p>7 Q. Now, at the top of Page 3, presentation in</p> <p>8 United States Department of Justice and SEC called</p> <p>9 Analysis of Trading in the Stock of Sedona</p> <p>10 Corporation, that involved market --</p> <p>11 A. I'm sorry?</p> <p>12 Q. That involved market manipulation?</p> <p>13 A. And I do apologize. A few answers ago, I</p> <p>14 told you --</p> <p>15 Q. Pardon?</p> <p>16 A. A few answers ago, I told you that I</p> <p>17 probably don't have a presentation on that topic.</p> <p>18 Clearly incorrect. I do have a presentation, yes,</p> <p>19 that was May of '04.</p> <p>20 Q. Now, were there any -- Other than those</p> <p>21 that you mentioned where you made a presentation,</p> <p>22 were there any analysis reports other than what was</p> <p>23 actually presented through litigation or</p> <p>24 investigation of market manipulation that you</p> <p>25 performed?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. No.</p> <p>3 Q. Was the client a plaintiff or defendant?</p> <p>4 A. I don't know. Probably a defendant, but</p> <p>5 I -- I don't know.</p> <p>6 Q. Okay. Why did you decline it?</p> <p>7 A. I don't remember the specifics, but I</p> <p>8 don't think it was -- there was something about it</p> <p>9 that I wasn't comfortable with.</p> <p>10 Q. What was it that you --</p> <p>11 A. I don't recall that.</p> <p>12 Q. Who approached you?</p> <p>13 MR. SOHN: Objection. I mean, I -- I</p> <p>14 don't know that this is appropriate. I don't know if</p> <p>15 it's confidential or not.</p> <p>16 A. My sense is that probably is confidential,</p> <p>17 so I would rather not go further, but -- I -- I don't</p> <p>18 know -- I --</p> <p>19 Q. Well, do you know who approached you?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know who the client was?</p> <p>22 A. I don't recall.</p> <p>23 Q. Pardon?</p> <p>24 A. I don't recall who the client was. I</p> <p>25 don't remember.</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 MR. SOHN: Can we have that one --</p> <p>3 A. In this case or in other cases?</p> <p>4 Q. Any cases, any situation. Investigation,</p> <p>5 clients coming and saying, We want you to look at</p> <p>6 this for us, law firms coming to you and asking.</p> <p>7 A. You mean like presenting what our</p> <p>8 capabilities in the area are?</p> <p>9 Q. Well, whether or not you did an analysis</p> <p>10 so someone can make a determination what's in that</p> <p>11 analysis.</p> <p>12 A. I was retained in a consulting capacity in</p> <p>13 a matter involving Nano Pierce stock.</p> <p>14 Q. Nano Pierce?</p> <p>15 A. Yes. I believe that's the name.</p> <p>16 Q. And what was the issue there?</p> <p>17 A. Rather similar to the one we have here.</p> <p>18 Q. An allegation that there was short selling</p> <p>19 as part of the manipulation?</p> <p>20 A. Along those lines, yes.</p> <p>21 Q. Okay. Any others?</p> <p>22 A. Recently I was approached by counsel to</p> <p>23 assist in a matter that I believe involved future</p> <p>24 price securities, and I declined that.</p> <p>25 Q. So you didn't prepare a report?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. So you know who approached you, but -- so</p> <p>3 it wasn't the client. Someone approached you on</p> <p>4 behalf of the client?</p> <p>5 A. It was an attorney. Yes.</p> <p>6 Q. Who was that?</p> <p>7 A. I'm sorry?</p> <p>8 Q. Who approached you?</p> <p>9 MR. SOHN: Again, I'm going to object to</p> <p>10 this. I don't think that it's a relevant or</p> <p>11 appropriate question.</p> <p>12 Q. You can answer the question.</p> <p>13 THE WITNESS: May I answer the question?</p> <p>14 MR. SOHN: I think it's an inappropriate</p> <p>15 question. I -- I don't see what it has to do with</p> <p>16 this case, and it's inappropriate as to --</p> <p>17 Q. Is Mr. Sohn representing you as a witness</p> <p>18 here?</p> <p>19 A. I don't believe so.</p> <p>20 Q. My question to you is, who approached you?</p> <p>21 MR. SOHN: Unfortunately, there's no one</p> <p>22 here representing FTI, so I still think it's an</p> <p>23 objectionable question and a totally inappropriate</p> <p>24 question.</p> <p>25 A. Sir, I -- Again, it was a situation that,</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 to the best of my recollection, involved future price</p> <p>3 securities. It was an issue that I don't believe --</p> <p>4 I did not believe I could be of assistance to</p> <p>5 counsel, and I declined.</p> <p>6 Q. Okay.</p> <p>7 A. I don't know the various ramifications of</p> <p>8 that situation, and I don't want to break a privilege</p> <p>9 or confidentiality.</p> <p>10 Q. Did you sign a confidentiality agreement</p> <p>11 before you had the discussion about this?</p> <p>12 A. No.</p> <p>13 Q. So there's no signed confidentiality?</p> <p>14 A. I would be a whole lot more comfortable if</p> <p>15 say we get counsel for FTI involved; and if they</p> <p>16 instruct me to answer this question, I'll be more</p> <p>17 than happy to do so.</p> <p>18 Q. When we take a break, can you consult with</p> <p>19 counsel for FTI to get an answer to that question?</p> <p>20 A. If I can reach him, yes, I will.</p> <p>21 Q. Now, why -- what was it about it that you</p> <p>22 said you couldn't help?</p> <p>23 A. Oh, no. I don't recall that part.</p> <p>24 Q. You don't recall it.</p> <p>25 A. No.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 know -- I don't have a recollection whether or not</p> <p>3 given -- My understanding is that this litigation has</p> <p>4 concluded, so there is a chance that I no longer keep</p> <p>5 these files, but I don't know one way or the other.</p> <p>6 Q. Was it your practice to discard the</p> <p>7 reports after you --</p> <p>8 A. There was no report.</p> <p>9 Q. There was no report.</p> <p>10 A. No.</p> <p>11 Q. What was there? I thought you said it was</p> <p>12 a consultation.</p> <p>13 A. Correct. I was -- I was retained in a</p> <p>14 consulting capacity. I did not write a report.</p> <p>15 Q. You did not write a report.</p> <p>16 A. No.</p> <p>17 Q. Keep any notes?</p> <p>18 A. I don't -- I don't know.</p> <p>19 Q. Did you do any analysis?</p> <p>20 A. Yes. To the extent that I was asked to</p> <p>21 attend the deposition of plaintiff's expert. I</p> <p>22 believe the name is Shapiro.</p> <p>23 Q. And did you write up an analysis of that</p> <p>24 after you attended that deposition?</p> <p>25 A. Whatever analyses were performed were</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 Q. Okay. So did you do any work with regard</p> <p>3 to trading activity in a security called Calypse,</p> <p>4 C-A-L-Y-P-T-E?</p> <p>5 A. Oh, the name rings a bell. That's all I</p> <p>6 can say. I do recognize the name. Whether I did or</p> <p>7 didn't do an analysis on it, I --</p> <p>8 Q. What about Nymox, N-Y-M-O-X?</p> <p>9 A. Same answer.</p> <p>10 Q. What about eLaw?</p> <p>11 A. We talked about eLaw. That was Internet</p> <p>12 Law Library.</p> <p>13 Q. Oh, eLaw is Internet Law Library?</p> <p>14 A. Yes.</p> <p>15 Q. Where is the -- Where's the -- Where</p> <p>16 physically is the work product?</p> <p>17 A. I don't know.</p> <p>18 Q. Did you attempt to find it?</p> <p>19 A. Attempt to find it. I don't believe I was</p> <p>20 asked to find that.</p> <p>21 Q. You weren't asked to. What about the work</p> <p>22 on Nano Pierce?</p> <p>23 A. Same answer.</p> <p>24 Q. Where is that work product?</p> <p>25 A. Nano Pierce. I do have -- I -- I don't</p>	<p>1 T. Beloreshki - Direct</p> <p>2 performed, to the best of my recollection, prior to</p> <p>3 that in preparation for the deposition. It was a</p> <p>4 rather constrained time frame, and that's about all I</p> <p>5 remember about that.</p> <p>6 Q. Who was the lawyer?</p> <p>7 A. DLA Piper.</p> <p>8 Q. Who is the DLA Piper?</p> <p>9 A. Caryn Schechtman would be one, and there</p> <p>10 was -- The deposition was taken by another attorney</p> <p>11 whose name is escaping me. He has since left, I</p> <p>12 believe.</p> <p>13 Q. What about the -- the work for eLaw, the</p> <p>14 work for Internet Law Library, where is that?</p> <p>15 A. I answered that question.</p> <p>16 Q. Who was the lawyer at Internet Law</p> <p>17 Library?</p> <p>18 A. Piper.</p> <p>19 Q. Piper. Who at Piper?</p> <p>20 A. I don't remember. My best sense is that</p> <p>21 at my deposition Caryn was representing the client,</p> <p>22 but that's as much --</p> <p>23 Q. Ms. Schechtman.</p> <p>24 MR. GUIDO: Mark this as exhibit next</p> <p>25 number, the judge's order in this case.</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 (Whereupon, Exhibit Prowse Beloreshki-6 is</p> <p>3 marked for identification by the reporter.)</p> <p>4 Q. Have you ever seen the judge's order in</p> <p>5 this case with regard to expert discovery?</p> <p>6 A. I don't believe so, no.</p> <p>7 Q. Did you ever discuss the judge's order</p> <p>8 with regard to expert discovery in this case with</p> <p>9 anyone?</p> <p>10 A. I don't think anyone is going to listen to</p> <p>11 me discussing the judge's order.</p> <p>12 Q. Pardon me?</p> <p>13 MR. SOHN: Do you have a copy of the</p> <p>14 actual order? I mean, this looks different than the</p> <p>15 order we got from the Court, so to the extent you're</p> <p>16 asking him --</p> <p>17 MR. GUIDO: This is the judge's record.</p> <p>18 MR. SOHN: I understand that, but you're</p> <p>19 asking the witness has he seen this before and it's a</p> <p>20 Westlaw version of the order.</p> <p>21 MR. GUIDO: I understand.</p> <p>22 Q. Did you ever see the judge's order with</p> <p>23 regard to expert discovery in this case?</p> <p>24 A. What I do remember seeing was a marked up</p> <p>25 version of the subpoena. That, I do remember seeing.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. I don't recall.</p> <p>3 Q. Did you discuss it with anyone after you</p> <p>4 received it in the mail?</p> <p>5 A. Yes.</p> <p>6 Q. Pardon?</p> <p>7 A. Yes.</p> <p>8 Q. With who?</p> <p>9 A. With members of the team within FTI and</p> <p>10 counsel.</p> <p>11 Q. Pardon?</p> <p>12 A. And counsel.</p> <p>13 Q. Which counsel?</p> <p>14 A. Oh, God. That, I don't recall.</p> <p>15 Q. Well, look at Item Number 9. Okay? It</p> <p>16 says, "All analyses, reports or testimony prepared</p> <p>17 for and/or presented in cases or administrative</p> <p>18 matters involving allegation of market manipulation</p> <p>19 or effects thereof."</p> <p>20 A. Yes. I do see that.</p> <p>21 Q. Hmm?</p> <p>22 A. I do see that.</p> <p>23 Q. Does that include the work you did on Nano</p> <p>24 Pierce?</p> <p>25 A. I don't know.</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 Q. The marked up version of the subpoena or</p> <p>3 the judge's Attachment A of the subpoena?</p> <p>4 MR. SOHN: Do you have a copy of it?</p> <p>5 Here's the issue. I have a copy, but it has my notes</p> <p>6 on it.</p> <p>7 MR. GUIDO: Why don't we just give it to</p> <p>8 him to identify. We'll put a exhibit number on it</p> <p>9 and we'll substitute it after. We'll mark this as</p> <p>10 exhibit next number. Okay?</p> <p>11 MR. SOHN: Okay.</p> <p>12 (Whereupon, Exhibit Prowse Beloreshki-7 is</p> <p>13 marked for identification by the reporter.)</p> <p>14 Q. Have you seen Exhibit Number 7 before?</p> <p>15 A. I may or may not have seen the entire</p> <p>16 Exhibit 7. I did see that attachment with the</p> <p>17 various markings and --</p> <p>18 Q. Attachment A.</p> <p>19 MR. SOHN: B.</p> <p>20 A. I don't know.</p> <p>21 Q. Excuse me. Attachment B. You don't know.</p> <p>22 Who showed it to you?</p> <p>23 A. My best sense is that it probably was</p> <p>24 e-mailed to me.</p> <p>25 Q. Okay. Who mailed it to you?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. Did you ask?</p> <p>3 A. The instruction that we received from</p> <p>4 counsel was to produce the materials, essentially all</p> <p>5 our work files in this matter.</p> <p>6 Q. In what?</p> <p>7 A. In this matter.</p> <p>8 Q. In this particular matter?</p> <p>9 A. Correct.</p> <p>10 Q. But not any other matter?</p> <p>11 A. Correct.</p> <p>12 Q. Were you specifically not directed not to</p> <p>13 produce your work product in other matters that dealt</p> <p>14 with market manipulation?</p> <p>15 A. I believe the answer is yes.</p> <p>16 MR. GUIDO: Let's take a break for five</p> <p>17 minutes, please.</p> <p>18 THE VIDEOGRAPHER: The time is 11:23.</p> <p>19 We're going off the record. This marks the end of</p> <p>20 Tape Number 1.</p> <p>21 (Whereupon, a recess is taken.)</p> <p>22 (Whereupon, Exhibit Prowse Beloreshki-8 is</p> <p>23 marked for identification by the reporter.)</p> <p>24 THE VIDEOGRAPHER: The time is 11:37.</p> <p>25 We're back on the record. This is Tape Number 2.</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 Q. Mr. Beloreshki, now that we're back on the</p> <p>3 record, I would like you to take a look at a document</p> <p>4 I've just had marked as Exhibit Number, I think, 8.</p> <p>5 MR. SOHN: This one?</p> <p>6 Q. Exhibit Number 8 is a packet of documents</p> <p>7 that were sent to the Securities and Exchange</p> <p>8 Commission by NERA in response to a subpoena I had</p> <p>9 issued to them for documents relating to your work</p> <p>10 when you were at NERA, and I would like to direct</p> <p>11 your attention to the -- If you look in the bottom</p> <p>12 right hand -- First of all, have you seen this</p> <p>13 document that I've had marked as Exhibit Number 8?</p> <p>14 A. I don't know. I mean, the formatting of</p> <p>15 the --</p> <p>16 Q. No. Excuse me. Have you recently seen</p> <p>17 the document with the cover letter?</p> <p>18 A. No. I mean, DS --</p> <p>19 Q. Pardon?</p> <p>20 A. No.</p> <p>21 Q. Have you seen any of the documents</p> <p>22 recently that have been marked as Exhibit Number 8?</p> <p>23 A. Can I have a moment to review it?</p> <p>24 Q. Yes.</p> <p>25 Have you had an opportunity to review --</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Bates Number NERA 3.</p> <p>3 Q. Who provided that to you?</p> <p>4 A. That would be counsel.</p> <p>5 Q. Pardon?</p> <p>6 A. Counsel.</p> <p>7 Q. Counsel for --</p> <p>8 A. DLA Piper.</p> <p>9 Q. Who at DLA Piper?</p> <p>10 A. Mr. Sohn and/or Caryn Mazin.</p> <p>11 Q. What about the pages that deal with</p> <p>12 Calypte -- C-A-L-Y-P-T-E -- Calypte? Excuse me.</p> <p>13 A. I don't recall seeing that.</p> <p>14 Q. And what about the pages that refer to Pet</p> <p>15 Quarters starting at Page 10?</p> <p>16 A. I don't have a recollection of that one,</p> <p>17 the one -- Again, the one page that rang a bell for</p> <p>18 me was NERA 3.</p> <p>19 Q. Let's walk through this and I'll ask you</p> <p>20 some questions and maybe this will help you refresh</p> <p>21 your recollection.</p> <p>22 On Page NERA 1, it says, "Calypte." Was</p> <p>23 that a company that you did an analysis for?</p> <p>24 A. We did analyses related to the stock price</p> <p>25 behavior of Calypte stock.</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 A. Yes.</p> <p>3 Q. Have you seen -- What is the date of the</p> <p>4 cover letter?</p> <p>5 A. February 23, 2000 --</p> <p>6 Q. Okay. Have you seen any of the -- 2000 --</p> <p>7 A. 10.</p> <p>8 Q. 10. Okay.</p> <p>9 Have you seen any of the documents that</p> <p>10 are in Exhibit Number 8? And if you look in the</p> <p>11 bottom right-hand corner, there's what's called a</p> <p>12 Bates stamp number.</p> <p>13 A. Yes.</p> <p>14 Q. NERA 1 through NERA 60, have you seen any</p> <p>15 of these documents?</p> <p>16 A. I don't recall seeing a document with a</p> <p>17 Bates stamp NERA, but that may be just because I</p> <p>18 didn't notice it, but I do remember seeing documents</p> <p>19 reflecting the billing records for Sedona. So the</p> <p>20 best answer I can give you is I've seen at least</p> <p>21 portions of this document. I don't believe I've seen</p> <p>22 the entire document.</p> <p>23 Q. Which portions have you seen?</p> <p>24 A. The one page that I recognize or I</p> <p>25 recognize a few items on it was the one with the</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. And was that a matter that involved an</p> <p>3 allegation of market manipulation?</p> <p>4 A. I don't recall.</p> <p>5 Q. Well, did it involve allegations of</p> <p>6 trading having an impact on stock prices?</p> <p>7 A. This is the likelihood, but I just don't</p> <p>8 know.</p> <p>9 Q. What happened to the documents?</p> <p>10 MR. SOHN: Which documents?</p> <p>11 Q. After you left Calypte? I'll get it</p> <p>12 straight one of these times.</p> <p>13 A. I don't know. What happened was that when</p> <p>14 I left NERA, I was not allowed to take my work files</p> <p>15 with me, and until probably last week when counsel</p> <p>16 showed me the letter that was sent to NERA requesting</p> <p>17 these documents, I would have said they were probably</p> <p>18 still with NERA, but at least some of the work files</p> <p>19 that I had at NERA I don't know related to what cases</p> <p>20 or what type of materials presumably were sent to me</p> <p>21 when I went to Deloitte.</p> <p>22 Q. On the work you did for Calypte, who did</p> <p>23 you do it for, what firm?</p> <p>24 A. If I had to guess, it would be Piper.</p> <p>25 Q. Piper.</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 Now, when you left DLA Piper write NERA</p> <p>3 and say all of those papers should be sent to</p> <p>4 Deloitte?</p> <p>5 A. That is the letter I just referred to.</p> <p>6 That said, I don't know -- I don't know whether NERA</p> <p>7 people had sufficient understanding of the work</p> <p>8 product that I had in the many matters while I worked</p> <p>9 there to -- to do that, so I don't know what portion</p> <p>10 of -- and which cases were transmitted to me at</p> <p>11 Deloitte.</p> <p>12 You have to understand, we -- I have</p> <p>13 worked on a number of cases. Some of them in a more</p> <p>14 junior role, some of them in a more senior role.</p> <p>15 Supervised by a number of people from Andrew Carron,</p> <p>16 Fred Dunbar, and I just don't know that these files</p> <p>17 were organized in a way that they would have been</p> <p>18 able to identify the documents and send them --</p> <p>19 Q. I'm sorry to interrupt, but look at the</p> <p>20 first page on Calypte. It says June 3rd, 2004, "work</p> <p>21 on statistical analysis of Calypte trading; e.g. log</p> <p>22 vs. arithmetic returns."</p> <p>23 A. Yes.</p> <p>24 Q. Do you remember preparing such an</p> <p>25 analysis?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 to counsel and perhaps in-house counsel. In this</p> <p>3 instance, the subpoena was given to me by somebody</p> <p>4 who was essentially stalking me at the reception</p> <p>5 area --</p> <p>6 Q. Called a process server. Right?</p> <p>7 A. I understand that.</p> <p>8 And that caused a little bit of a</p> <p>9 commotion, and not of the pleasant type, among senior</p> <p>10 colleagues of mine who were worried I might be</p> <p>11 getting a personal subpoena for some -- something.</p> <p>12 So, regardless, I did accept the subpoena, and I</p> <p>13 communicated this to in-house counsel so they're</p> <p>14 aware of it and they can proceed accordingly.</p> <p>15 Q. So did you get advice from inside counsel?</p> <p>16 MR. SOHN: Objection. That's a yes/no</p> <p>17 answer. Calls for privileged information.</p> <p>18 A. Yes.</p> <p>19 Q. Pardon?</p> <p>20 A. Yes.</p> <p>21 Q. Now, what did you do after you got the</p> <p>22 advice from inside counsel?</p> <p>23 A. We collected all the documents that we</p> <p>24 were advised to collect, and we provided them.</p> <p>25 Q. And who did you provide them to?</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 A. I don't know what this analysis was, but</p> <p>3 it is reflected in my time records.</p> <p>4 Q. Pardon?</p> <p>5 A. I don't remember what these analyses were,</p> <p>6 but they would be reflected in my time records.</p> <p>7 Q. Well, the Court order in this case is</p> <p>8 directed toward you in Attachment B, okay, and that</p> <p>9 is documents sought from Mr. Prowse and</p> <p>10 Mr. Beloreshki.</p> <p>11 And you received the subpoena. Right?</p> <p>12 A. I did receive the subpoena. I do remember</p> <p>13 that.</p> <p>14 Q. Okay. And the subpoena sought all</p> <p>15 analyses prepared for and/or presented in cases or</p> <p>16 administrative matters involving allegations of</p> <p>17 market manipulation or effects thereof.</p> <p>18 Now, my question is, did you go back to</p> <p>19 NERA and ask them to produce the documents?</p> <p>20 A. That is not what I did, and this is not</p> <p>21 the procedure that we are asked to follow when we are</p> <p>22 subpoenaed.</p> <p>23 Q. What is the procedure you're asked and who</p> <p>24 asks you to follow?</p> <p>25 A. Well, typically subpoenas are transmitted</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. The physical transmission was done</p> <p>3 probably by an associate of mine, Erica Rose, so I</p> <p>4 don't know who she sent it to.</p> <p>5 Q. Did she create a list of what she</p> <p>6 provided?</p> <p>7 A. I do not know if she created a separate</p> <p>8 list itemizing all the documents.</p> <p>9 Q. Did she create a copy of what she</p> <p>10 provided?</p> <p>11 A. That would be a fair statement.</p> <p>12 Q. Will you go back and see if there's a list</p> <p>13 of the copies of the documents that were provided?</p> <p>14 A. I can certainly ask her about that.</p> <p>15 Q. Pardon?</p> <p>16 A. I can certainly ask her about that.</p> <p>17 Q. Can you do that before I take Mr. Prowse's</p> <p>18 deposition?</p> <p>19 A. When is his deposition?</p> <p>20 Q. Friday.</p> <p>21 A. Yes.</p> <p>22 Q. And so where did the documents go that</p> <p>23 were pulled together?</p> <p>24 A. Again, I was not the one who did that</p> <p>25 transmission.</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 Q. So you don't know where they were --</p> <p>3 A. No.</p> <p>4 Q. And you didn't make any request of NERA</p> <p>5 for any documents covered by the subpoena?</p> <p>6 A. Correct.</p> <p>7 Q. Now, let's take a look at, starting with</p> <p>8 Page 3 through 10. That covers all the Sedona</p> <p>9 activities.</p> <p>10 A. I'm sorry. Which page are you on?</p> <p>11 Q. Page 3.</p> <p>12 A. Yes.</p> <p>13 Q. See on December 30th, 2003, the entry of</p> <p>14 4.775 hours?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Hmm?</p> <p>17 A. Yes.</p> <p>18 Q. Do you see where it says Nymox, N-Y-M-O-X?</p> <p>19 What does that refer to?</p> <p>20 A. I believe Nymox future price securities.</p> <p>21 Q. Pardon?</p> <p>22 A. I believe that is a company that issued</p> <p>23 future price securities at some point.</p> <p>24 Q. And did you do an analysis of Nymox?</p> <p>25 A. The entry reads "Nymox chron.," which</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. Yes.</p> <p>3 Q. Asks for all documents concerning any</p> <p>4 meeting, telephone conversation, or other</p> <p>5 communications between Prowse, Beloreshki and/or DLA</p> <p>6 Piper regarding the Prowse report documents related</p> <p>7 thereto or the results of any other studies or</p> <p>8 reports of market manipulation.</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. And you prepared such reports when you</p> <p>12 were at NERA. Right? Notes of such conversations or</p> <p>13 meetings?</p> <p>14 A. First, again, when you say notes of</p> <p>15 meetings, these are not, you know, meant to be</p> <p>16 minutes of a meeting or anything. These could be</p> <p>17 notes that I might jot a couple of thoughts about,</p> <p>18 you know, ideas that I might want to follow up on,</p> <p>19 and I don't -- I wouldn't even expect to keep those.</p> <p>20 Q. But isn't it a document concerning</p> <p>21 something; a meeting, conversation?</p> <p>22 A. It is concerning something, but I don't</p> <p>23 know what the something is.</p> <p>24 Q. It's a document concerning any meeting,</p> <p>25 telephone conversations or other communications.</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 probably refers to a chronology of events, but that's</p> <p>3 about as much as I can glean out of this.</p> <p>4 Q. Did you do some analysis to determine what</p> <p>5 the chronology was?</p> <p>6 A. I cannot give you a better answer. I just</p> <p>7 don't recall anything more than that.</p> <p>8 Q. There's a number of references in here to</p> <p>9 notes. For example, on December 24th, there's an</p> <p>10 eight-hour entry, "preparation for presentation to</p> <p>11 client en route and in DC. Notes."</p> <p>12 A. Yes.</p> <p>13 Q. Do you typically write notes in meetings</p> <p>14 with counsel on projects you're working on?</p> <p>15 A. I do, but they're not the notes that you</p> <p>16 would typically think of. Those would be more like,</p> <p>17 for the lack of better word, random notes, ideas that</p> <p>18 I want to follow up on.</p> <p>19 Q. Pardon?</p> <p>20 A. These would be -- These would be notes</p> <p>21 that would -- you know, I would jot down possibly</p> <p>22 things, thoughts I might have or, you know, ideas of</p> <p>23 what I might want to do --</p> <p>24 Q. Well, look at Item Number 8 in Exhibit</p> <p>25 Number 7. Do you have Exhibit Number 7?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Right?</p> <p>3 A. Correct. But when you say it is a</p> <p>4 document, I -- I don't believe that I do have these</p> <p>5 documents.</p> <p>6 Q. You don't believe you have the documents?</p> <p>7 A. Correct.</p> <p>8 Q. But you also testified you didn't go back</p> <p>9 and look?</p> <p>10 MR. SOHN: Objection. I don't think</p> <p>11 that's the testimony.</p> <p>12 Q. I don't understand how you know you don't</p> <p>13 have any if you didn't go back and look.</p> <p>14 A. I did in terms of -- In terms of providing</p> <p>15 documents, I did everything I was asked to --</p> <p>16 Q. I didn't ask you for your interpretation</p> <p>17 of what you did. I asked you a very specific</p> <p>18 question.</p> <p>19 A. Yes.</p> <p>20 Q. Okay?</p> <p>21 Did you go look for notes that are</p> <p>22 referred to in Exhibit Number 8?</p> <p>23 A. We did go and look for any kind of notes</p> <p>24 relating to work in this case. If your question is</p> <p>25 whether I requested NERA provide me with documents,</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 the answer is no.</p> <p>3 Q. Well, I mean, take a look at NERA 49 and</p> <p>4 NERA 48.</p> <p>5 Doesn't that relate that all files related</p> <p>6 to Sedona on matters that you worked on on behalf of</p> <p>7 DLA Piper were to be transferred to Deloitte &</p> <p>8 Touche?</p> <p>9 MR. SOHN: You're asking if that's what</p> <p>10 the letter says?</p> <p>11 MR. GUIDO: I'm asking whether or not he</p> <p>12 understands.</p> <p>13 A. Let me put it this way. As I said, I was</p> <p>14 not allowed to take these documents with me, which I</p> <p>15 guess is what precipitated this exchange. I would</p> <p>16 suggest -- and that's consistent with my answer to</p> <p>17 your previous questions -- that I don't know the</p> <p>18 extent to which NERA would have been able to identify</p> <p>19 all the relevant documents. And looking at this</p> <p>20 document, I do not believe that there was a project</p> <p>21 on Andreas Badian at NERA, so I don't know</p> <p>22 necessarily what this refers to.</p> <p>23 Q. But there was a project Sedona?</p> <p>24 A. Correct. There was a project Sedona.</p> <p>25 Q. That's right. That's what this time sheet</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. Do you recall receiving documents while</p> <p>3 you were at Deloitte & Touche for work that you did</p> <p>4 while you were at NERA?</p> <p>5 A. That is correct.</p> <p>6 Q. What happened to those boxes?</p> <p>7 A. I don't have a recollection. I don't</p> <p>8 know.</p> <p>9 Q. Well, when you left Deloitte & Touche,</p> <p>10 what happened to the documents relating to your work</p> <p>11 that you had previously done?</p> <p>12 A. These boxes or materials were not part of</p> <p>13 the materials that I took with me to FTI from</p> <p>14 Deloitte.</p> <p>15 Q. So the Sedona, the PETCO and eLaw</p> <p>16 documents, as far as you know, could still be at</p> <p>17 Deloitte?</p> <p>18 A. I'll be speculating. I don't know.</p> <p>19 Q. You don't know?</p> <p>20 A. I don't know.</p> <p>21 Q. You testified you didn't take them with</p> <p>22 you when you went to FTI?</p> <p>23 A. Correct.</p> <p>24 Q. Did you make a request of Deloitte &</p> <p>25 Touche for the documents?</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 is referring to, Sedona. It doesn't say Badian, does</p> <p>3 it?</p> <p>4 A. The document you are referring to refers</p> <p>5 to Andreas Badian.</p> <p>6 Q. It also refers to Sedona?</p> <p>7 A. We are in agreement on that.</p> <p>8 Q. Pardon?</p> <p>9 A. We are in agreement.</p> <p>10 Q. What was the agreement?</p> <p>11 A. That it refers to Sedona and it refers to</p> <p>12 Andreas Badian. My only point is that I do not</p> <p>13 recall working on a project Andreas Badian while at</p> <p>14 NERA.</p> <p>15 Q. I'm referring to -- will you please answer</p> <p>16 my question?</p> <p>17 A. What is the question?</p> <p>18 Q. The Sedona documents that you generated</p> <p>19 when you were at NERA transferred at the request of</p> <p>20 Caryn Schechtman to DLA Piper -- I mean, to</p> <p>21 Deloitte & Touche?</p> <p>22 A. I do have a recollection of receiving</p> <p>23 boxes of materials, not numerous amount of materials.</p> <p>24 I do not have a recollection of whether those were</p> <p>25 Sedona or some other project related.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. No.</p> <p>3 Q. Would you go back and do so?</p> <p>4 A. If instructed to do so, I have no reason</p> <p>5 not to.</p> <p>6 Q. I'm requesting you to do so. I'm not</p> <p>7 instructing you, but I have the subpoena outstanding</p> <p>8 to you and I can go to the Court and ask the Court to</p> <p>9 instruct you.</p> <p>10 My question to you today is, are you going</p> <p>11 to go back to Deloitte with a written request for the</p> <p>12 documents, provide me with that written request?</p> <p>13 A. I don't know if I can do that, but I'll</p> <p>14 work through counsel to get this thing done.</p> <p>15 Q. Will you do the letter before I take</p> <p>16 Mr. Prowse's deposition on Thursday if you're going</p> <p>17 to do it?</p> <p>18 A. Certainly.</p> <p>19 Q. Now, this makes reference to on -- Look at</p> <p>20 February 20th, 2004.</p> <p>21 A. Which page are we on?</p> <p>22 Q. On Page 4.</p> <p>23 A. Yes.</p> <p>24 Q. See it says work through additional pasts</p> <p>25 per yesterday's meeting with counsel, review economic</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 literature on equity manipulation. Summary materials</p> <p>3 to include in package of materials for -- it says</p> <p>4 counts, but I assume it's counsel -- finalize work on</p> <p>5 presentation?</p> <p>6 A. I do see that entry.</p> <p>7 Q. Now, when you received the subpoena in</p> <p>8 this case, did you look for any literature, economic</p> <p>9 literature on equity manipulation?</p> <p>10 MR. SOHN: That he has now?</p> <p>11 Q. When you received the subpoena, did you</p> <p>12 look for any economic literature on equity</p> <p>13 manipulation for Sedona?</p> <p>14 A. We provided all the files including any</p> <p>15 files that may have dealt with --</p> <p>16 Q. I didn't ask you whether you provided. I</p> <p>17 asked did you look for it.</p> <p>18 A. Correct. I provided all the files that I</p> <p>19 have in my Sedona folder to Erica Rose so that those</p> <p>20 could be produced.</p> <p>21 Q. Well, how voluminous was the file?</p> <p>22 A. I don't know how voluminous it was. I</p> <p>23 provided all my files related to Sedona, the work we</p> <p>24 did in this particular matter to Erica, and those</p> <p>25 were produced.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 less electronic.</p> <p>3 Q. Pardon?</p> <p>4 A. I try to keep them in electronic forms.</p> <p>5 Q. Here -- okay. Here on February 20, 2004,</p> <p>6 it says you reviewed economic literature on equity</p> <p>7 manipulations.</p> <p>8 A. Yeah.</p> <p>9 Q. Did you put that in an electronic</p> <p>10 database?</p> <p>11 A. I don't know what I might have done with</p> <p>12 that.</p> <p>13 Q. Well, what is your practice?</p> <p>14 MR. SOHN: What is it now or what was it</p> <p>15 in 2004?</p> <p>16 Q. What was it then?</p> <p>17 A. Certainly over time I have gone a whole</p> <p>18 lot more towards keeping things in electronic form.</p> <p>19 Q. Well, those that are not in electronic</p> <p>20 form, did you keep them in hard copy?</p> <p>21 A. I'm -- I don't know. My inclination is to</p> <p>22 say no.</p> <p>23 Q. Well, look at March 5th, 2004, and March</p> <p>24 9, 1.25. It says, "Miscellaneous data request,</p> <p>25 electronic files from counsel. Provide materials for</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 Q. Who physically pulled together the</p> <p>3 documents?</p> <p>4 A. That would be me.</p> <p>5 Q. All right. So was there a banker's box</p> <p>6 worth of documents?</p> <p>7 A. No. I gave her my E mail files.</p> <p>8 Q. What?</p> <p>9 A. Those were the electronic files that I</p> <p>10 had.</p> <p>11 Q. You gave her your E mail files?</p> <p>12 A. No. I apologize. I referred to my</p> <p>13 electronic files.</p> <p>14 Q. You gave her a disk of your electronic</p> <p>15 files?</p> <p>16 A. It may have been a disk. It may have been</p> <p>17 an E mail. I don't know.</p> <p>18 Q. Okay. But it was your electronic files</p> <p>19 from your computer?</p> <p>20 A. Correct.</p> <p>21 Q. What about hard-copy files?</p> <p>22 A. I don't keep hard-copy files of the nature</p> <p>23 you're referring to.</p> <p>24 Q. What do you do with them?</p> <p>25 A. These days, I try to keep things more or</p>	<p>1 T. Beloreshki - Direct</p> <p>2 counsel" -- under March 9, "Provide materials for</p> <p>3 counsel, revise analysis using revised terms, notes.</p> <p>4 MR. SOHN: Didn't you just go -- didn't</p> <p>5 you just go through and establish what happened to</p> <p>6 the NERA files? Are we going to go through each one</p> <p>7 and see whether or not --</p> <p>8 MR. GUIDO: No. I'm asking about -- I'm</p> <p>9 asking about specific files. I think I've already</p> <p>10 gone through, and he says that he didn't make any</p> <p>11 effort to go to Deloitte to get the files. He didn't</p> <p>12 think that NERA had transferred the files. Okay. I</p> <p>13 have asked him to go back and rerequest those files,</p> <p>14 okay, and now I'm talking about a set of files that</p> <p>15 was transferred to your firm, and I'm asking him some</p> <p>16 questions about those files.</p> <p>17 MR. SOHN: Where does it say they were</p> <p>18 transferred to my firm?</p> <p>19 MR. GUIDO: "Provide materials to counsel</p> <p>20 per her request." Okay? That sure reads like the</p> <p>21 document -- He provided documents to your firm and</p> <p>22 those documents haven't been produced. May I ask the</p> <p>23 witness the questions?</p> <p>24 MR. SOHN: Sure.</p> <p>25 Q. When you provided documents to counsel in</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 the Sedona matter, did you keep a record of providing</p> <p>3 those documents?</p> <p>4 A. I don't have a recollection of keeping a</p> <p>5 record of -- of these documents, no.</p> <p>6 Q. All right. Let's go to May 24th, 2004,</p> <p>7 NERA file. See where it makes reference to</p> <p>8 presentation at the SEC?</p> <p>9 A. May 24th?</p> <p>10 Q. May 24th, 8.75 hours.</p> <p>11 A. Yes.</p> <p>12 Q. Finalize presentation. Presentation at</p> <p>13 the SEC post meeting notes.</p> <p>14 A. Yes.</p> <p>15 Q. Did you make an effort to look for notes</p> <p>16 after you met with the SEC?</p> <p>17 MR. SOHN: Make an effort in response to</p> <p>18 the subpoena to look for records from 2004? Yes?</p> <p>19 That's the question?</p> <p>20 MR. GUIDO: My question is he had a</p> <p>21 subpoena that he received. When he received the</p> <p>22 subpoena, did he look for the notes that he referred</p> <p>23 to in this May 24th, 2004, entry?</p> <p>24 A. The response with respect to notes would</p> <p>25 be the same. I rarely keep notes. Okay? I might</p>	<p>1 T. Beloreshki - Direct</p> <p>2 I asked you whether you looked.</p> <p>3 A. And the answer is I did not.</p> <p>4 Q. Then it says October 12th, 2004, provide</p> <p>5 counsel with Sedona Corp. database.</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. What's a Sedona Corp. database?</p> <p>9 A. I'll be speculating. I don't know.</p> <p>10 Q. You don't know.</p> <p>11 You presented a report that was relying on</p> <p>12 a database, wasn't it?</p> <p>13 A. On a database. Correct.</p> <p>14 Q. Where did you get that database?</p> <p>15 A. That database was compiled from various</p> <p>16 account statements while I was at NERA.</p> <p>17 Q. From account statements when you were at</p> <p>18 NERA?</p> <p>19 A. Correct.</p> <p>20 Q. What account statements?</p> <p>21 A. Monthly account statements for the various</p> <p>22 parties in -- that trading was done through.</p> <p>23 MR. GUIDO: I would like to have marked as</p> <p>24 Exhibit Number 9 a -- one rendition of your Exhibit</p> <p>25 Number 3, Materials Considered.</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 jot something down. Then it will get executed and</p> <p>3 the notes will go away. This is not something I'll</p> <p>4 keep.</p> <p>5 Q. I didn't ask you what you did. I asked</p> <p>6 you -- what you typically did. I asked you if you</p> <p>7 looked for these?</p> <p>8 A. My understanding was I was required to</p> <p>9 provide the presentation that was subject to that</p> <p>10 data entry, and I didn't have a reason to look for</p> <p>11 any materials beyond that.</p> <p>12 Q. So you didn't look is the answer?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. Now, on May 26, 2004, it says</p> <p>15 complete -- 3.75 hours. It says, "Complete market</p> <p>16 model analysis." What does that refer to?</p> <p>17 A. I don't know.</p> <p>18 Q. Did you look whether or not there was a</p> <p>19 market model analysis that you did with regard to</p> <p>20 Sedona?</p> <p>21 A. The -- The same answer. I didn't have a</p> <p>22 reason to look.</p> <p>23 Q. Pardon?</p> <p>24 A. I did not have a reason --</p> <p>25 Q. I didn't ask you whether you had a reason.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 (Whereupon, Exhibit Prowse Beloreshki-9 is</p> <p>3 marked for identification by the reporter.)</p> <p>4 Q. And I would like you to turn your</p> <p>5 attention to Exhibit Number 3. I'm sorry.</p> <p>6 MR. SOHN: You mean Exhibit 4.</p> <p>7 Q. What is the report?</p> <p>8 A. 4.</p> <p>9 Q. Okay. Turning to Exhibit Number 4 and</p> <p>10 your Exhibit Number 3 --</p> <p>11 MR. SOHN: Which you just marked as</p> <p>12 Exhibit 9.</p> <p>13 MR. GUIDO: Pardon?</p> <p>14 MR. SOHN: Which you just marked as</p> <p>15 Exhibit 9.</p> <p>16 MR. GUIDO: Well, wait till I ask my</p> <p>17 question. Don't be clever, Mr. Sohn.</p> <p>18 Q. Take a look at what I've marked as Exhibit</p> <p>19 Number 9 and compare it to your Exhibit Number 3 in</p> <p>20 your report, Exhibit Number 4, and tell me if you see</p> <p>21 any differences there.</p> <p>22 A. The one thing I do see is there are two</p> <p>23 Bates ranges that are in Exhibit 9 that are not in</p> <p>24 Exhibit 3 or Exhibit 4.</p> <p>25 Q. One is the Bates ranges for trading data.</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 Correct?</p> <p>3 A. Yes.</p> <p>4 Q. And what were those Bates ranges on</p> <p>5 Exhibit Number 9?</p> <p>6 A. The ones that are reflected in Exhibit 9</p> <p>7 are RA 1 through 2591 and GOJO 1 through 945.</p> <p>8 Q. What does GOJO refer to?</p> <p>9 A. I don't know.</p> <p>10 Q. Well, did you prepare the Exhibit Number 3</p> <p>11 that you put into your report, Exhibit Number 4?</p> <p>12 A. It was prepared by -- by us, by which I</p> <p>13 mean, me, Steve, and Erica Rose. Probably Erica Rose</p> <p>14 is the person who did the actual preparation of the</p> <p>15 exhibit.</p> <p>16 Q. I would like you to reference your Exhibit</p> <p>17 Number 3 in your report, Exhibit Number 4?</p> <p>18 A. I did not.</p> <p>19 Q. You don't know?</p> <p>20 A. I did not.</p> <p>21 Q. You did not. Who did?</p> <p>22 A. I don't know.</p> <p>23 Q. Was it in your report when you provided it</p> <p>24 to DLA Piper?</p> <p>25 A. I don't know.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. Were all of the documents you provided to</p> <p>3 DLA Piper when you responded to the subpoena served</p> <p>4 upon you on an electronic disk?</p> <p>5 A. I provided my electronic documents to</p> <p>6 Erica Rose, to the best of my recollection, in an</p> <p>7 electronic form either via E mail or sending to her</p> <p>8 in a CD ROM.</p> <p>9 Q. Who's Erica Rose?</p> <p>10 A. She's an associate of mine who's working</p> <p>11 on this matter.</p> <p>12 Q. An associate of yours?</p> <p>13 A. Yes.</p> <p>14 Q. And that's all you provided her?</p> <p>15 A. Correct. The rest of the materials were</p> <p>16 collected by her working with Steve and counsel, yes.</p> <p>17 Q. Working with Steve who?</p> <p>18 A. Steve Prowse.</p> <p>19 Q. Who's that?</p> <p>20 A. That is the co-author of the report.</p> <p>21 Q. And who else?</p> <p>22 A. Probably -- and -- and counsel.</p> <p>23 Q. Counsel for FTI or counsel for Badian?</p> <p>24 A. I meant DLA Piper.</p> <p>25 Q. Now, you said that the database you</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 Q. Do you know what it refers to?</p> <p>3 A. Which one?</p> <p>4 Q. The GOJO?</p> <p>5 A. In all likelihood, it refers to account</p> <p>6 statements.</p> <p>7 Q. Hmm?</p> <p>8 A. It all likelihood, it refers to account</p> <p>9 statements.</p> <p>10 Q. It refers to account statements?</p> <p>11 A. Yes. I don't have a recollection of what</p> <p>12 that range of Bates numbers refers to.</p> <p>13 Q. So let me ask you something. That GOJO,</p> <p>14 what are the Bates ranges again?</p> <p>15 A. 1 through 945.</p> <p>16 Q. 1 through 945.</p> <p>17 There are no documents that have been</p> <p>18 provided to the SEC that say GOJO 1 through -- what</p> <p>19 is the number?</p> <p>20 A. 945.</p> <p>21 Q. 945.</p> <p>22 Did you provide those to counsel, DLA</p> <p>23 Piper?</p> <p>24 A. I wouldn't know one way or the other. I</p> <p>25 don't know.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 created was created off of account statements.</p> <p>3 Right? Am I correct?</p> <p>4 A. Yes.</p> <p>5 Q. The account statements that you relied</p> <p>6 upon, you said that they were Pond account</p> <p>7 statements?</p> <p>8 A. I'm sorry. I missed the question.</p> <p>9 Q. Were they Pond account statements?</p> <p>10 A. I don't know.</p> <p>11 Q. You don't know.</p> <p>12 Were they Pond trade tickets?</p> <p>13 A. I don't remember seeing trading tickets.</p> <p>14 Q. Were they Refco account statements?</p> <p>15 A. Possibly.</p> <p>16 Q. Hmm?</p> <p>17 A. Possibly.</p> <p>18 Q. Were they Refco trade confirmations?</p> <p>19 A. I wouldn't be able to give an answer one</p> <p>20 way or the other.</p> <p>21 Q. So you don't know. Today you don't know?</p> <p>22 A. Correct.</p> <p>23 Q. Well, take a look at your Exhibit</p> <p>24 Number 3. You list three categories of account</p> <p>25 statements. Is it your understanding that that's the</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 inclusive group of account statements that you</p> <p>3 referred to to prepare your database?</p> <p>4 A. When you say "that," what are you</p> <p>5 referring to?</p> <p>6 Q. Pardon me?</p> <p>7 A. I'm not --</p> <p>8 Q. Exhibit Number 3 and Exhibit Number 4 have</p> <p>9 three entries of accounting statements at the bottom</p> <p>10 of the page. Okay? Is that the universe of account</p> <p>11 statements that you looked to to prepare the database</p> <p>12 that you did an analysis of in this case?</p> <p>13 A. I don't know.</p> <p>14 Q. You don't know.</p> <p>15 The subpoena required you to produce all</p> <p>16 documents that you considered or relied upon for your</p> <p>17 report, and now you don't know what it is you relied</p> <p>18 upon. This purports -- it says materials reviewed in</p> <p>19 this report.</p> <p>20 A. I understand. What -- There's a little</p> <p>21 bit of a time dependency in this process. The</p> <p>22 records were assembled and combined into a database</p> <p>23 while I was at NERA seven years ago, six years ago,</p> <p>24 something of that range, and what I do remember is</p> <p>25 that we went through a very vigorous process</p>	<p>1 T. Beloreshki - Direct</p> <p>2 MR. SOHN: What do you mean, ever seen?</p> <p>3 This one or --</p> <p>4 MR. GUIDO: This one.</p> <p>5 MR. SOHN: With this information on it?</p> <p>6 MR. GUIDO: I'll ask my questions,</p> <p>7 Mr. Sohn.</p> <p>8 Q. Have you had an opportunity to review?</p> <p>9 A. Yes.</p> <p>10 Q. Have you ever seen that spreadsheet</p> <p>11 before?</p> <p>12 A. I don't know if I have seen this</p> <p>13 particular spreadsheet with the formatting.</p> <p>14 Q. Pardon?</p> <p>15 A. I don't know if I have seen that</p> <p>16 particular spreadsheet, but the formatting is</p> <p>17 familiar.</p> <p>18 Q. Have you ever heard of the Goodman Jones</p> <p>19 report?</p> <p>20 A. I heard of Goodman Jones only over the</p> <p>21 last week or so.</p> <p>22 Q. Only the last week or so.</p> <p>23 Were you ever provided with an electronic</p> <p>24 spreadsheet similar to Exhibit Number D that was put</p> <p>25 in your Exhibit Number 10?</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 verifying that the database was robust and complete.</p> <p>3 As Dr. Fred Dunbar can probably attest,</p> <p>4 there are very strict rules at NERA in terms of</p> <p>5 checking very fine work that is basically each piece</p> <p>6 of work done by one researcher gets replicated by a</p> <p>7 second, and so forth. So in terms of confidence in</p> <p>8 the database that we analyzed, I do have that.</p> <p>9 MR. GUIDO: I would like to have marked a</p> <p>10 document that's been previously marked as SEC 47 in</p> <p>11 this case, and it is now going to be 10.</p> <p>12 (Whereupon, Exhibit Prowse Beloreshki-10</p> <p>13 is marked for identification by the reporter.)</p> <p>14 Q. Have you ever seen this before?</p> <p>15 A. I don't recall seeing these documents</p> <p>16 before.</p> <p>17 Q. Well, take a look at -- It has Bates stamp</p> <p>18 SEC-Badian 22917.</p> <p>19 A. 229 --</p> <p>20 Q. Pardon?</p> <p>21 MR. SOHN: 22917.</p> <p>22 Q. 22917.</p> <p>23 Have you ever seen a spreadsheet that</p> <p>24 looks like the pages that are Bates-stamped 22917 to</p> <p>25 22934?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. I don't believe that's the case.</p> <p>3 Q. You don't believe that you've ever seen a</p> <p>4 spreadsheet that contains the information that's on</p> <p>5 Exhibit Number D, which is in Exhibit Number 10?</p> <p>6 A. No. Your question was what I was</p> <p>7 provided.</p> <p>8 Q. I didn't ask --</p> <p>9 A. That was your question.</p> <p>10 Q. I didn't ask you what my question was.</p> <p>11 I'm asking you a question now.</p> <p>12 A. Yes.</p> <p>13 Q. Were you ever provided with an electronic</p> <p>14 database in order to prepare your database to rely</p> <p>15 upon? Let me phrase the question that way.</p> <p>16 A. The answer is yes, but it would not have</p> <p>17 looked like --</p> <p>18 Q. Is what?</p> <p>19 A. The answer is yes, but it would not have</p> <p>20 looked like this file that I have in front of me.</p> <p>21 Q. It did not look like what I've just shown</p> <p>22 you?</p> <p>23 A. Correct.</p> <p>24 Q. Who provided it to you?</p> <p>25 A. Counsel.</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 Q. Counsel for who?</p> <p>3 A. Caryn Mazin.</p> <p>4 Q. And when did they provide it to you?</p> <p>5 A. Very early on in the process of our work</p> <p>6 on the Sedona matter, and I mean that the Sedona</p> <p>7 matter that I worked while with NERA.</p> <p>8 Q. So the Sedona work you did while you were</p> <p>9 at NERA?</p> <p>10 A. Pardon?</p> <p>11 Q. The Sedona work you did while you were at</p> <p>12 NERA? Is that what you said?</p> <p>13 A. Yes.</p> <p>14 Q. Now, in terms of the databases that you</p> <p>15 used for your report, which is Exhibit Number 4, the</p> <p>16 expert report you did with Mr. Prowse, was that data</p> <p>17 all data that you had created when you were at NERA?</p> <p>18 MR. SOHN: Objection to form.</p> <p>19 Q. You may answer the question.</p> <p>20 A. I'm a little reluctant to give you an</p> <p>21 answer because we don't just create data.</p> <p>22 Q. Okay. I said created a database.</p> <p>23 A. I apologize. My mistake.</p> <p>24 Q. Pardon?</p> <p>25 A. I apologize if I misheard you.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. That's not what I asked. Are you saying</p> <p>3 today that Dr. Dunbar verified the accuracy of your</p> <p>4 work in generating the database for Sedona?</p> <p>5 A. That was a different question.</p> <p>6 Q. Well, that's my question.</p> <p>7 A. I would not say Dr. Dunbar verified the</p> <p>8 accuracy of setting up the database. What I did say</p> <p>9 was Dr. Dunbar was a senior colleague of mine on who</p> <p>10 I would seek advice --</p> <p>11 Q. You still haven't answered my question.</p> <p>12 Are you saying today that Dr. Dunbar verified the</p> <p>13 accuracy of the Sedona database that you relied upon?</p> <p>14 Yes or no?</p> <p>15 MR. SOHN: Objection. He did answer.</p> <p>16 A. I did answer that question. I would not</p> <p>17 expect Dr. Dunbar to verify the database, but he was</p> <p>18 aware of procedures that we had in place at NERA in</p> <p>19 terms of quality controls. That's what I said.</p> <p>20 Q. So you're saying that the procedures that</p> <p>21 were used at NERA you followed in verifying the</p> <p>22 accuracy of the Sedona database you relied upon?</p> <p>23 A. We followed the procedures and it's a very</p> <p>24 robust process because we wanted to ensure that all</p> <p>25 the various sources matched up and all the numbers</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 As I said, we had procedures that if one</p> <p>3 research associate creates a database, then another</p> <p>4 researcher would create -- would go through the same</p> <p>5 steps to create a database, and those would be</p> <p>6 reconciled in order to ensure that there is a quality</p> <p>7 control on procedures in place.</p> <p>8 Q. Are you comfortable today that the</p> <p>9 database you relied upon in trading in Sedona stock</p> <p>10 by entities that were related to Amro International</p> <p>11 were accurately included in your database?</p> <p>12 A. I'm comfortable with the database we used</p> <p>13 and, as I said, that database was created using very</p> <p>14 robust quality check controls, and on that you can</p> <p>15 verify this by talking to Dr. Dunbar to the extent</p> <p>16 that he understands the policies and procedures --</p> <p>17 Q. Did Dr. Dunbar work on the Sedona matter?</p> <p>18 A. I don't know how to give you an answer yes</p> <p>19 or no.</p> <p>20 Q. Well, are you alleging he did?</p> <p>21 A. Dr. Dunbar was a senior colleague of mine,</p> <p>22 and he was involved in -- in -- in work on a number</p> <p>23 of manipulation cases, and he would have been the</p> <p>24 natural choice for me to ask for guidance in work on</p> <p>25 cases like this one.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 tied out nicely, so yes.</p> <p>3 Q. Have you ever heard of anyone at NERA</p> <p>4 ending up presenting an expert report and having it</p> <p>5 pointed out to them by opposing counsel that there</p> <p>6 was a significant error in that report?</p> <p>7 A. I don't know what you're referring to.</p> <p>8 Q. United Savings & Trust litigation in</p> <p>9 Texas.</p> <p>10 A. I'm not sure what you are referring to.</p> <p>11 Q. You don't know?</p> <p>12 A. No.</p> <p>13 Q. You have never heard of an expert from</p> <p>14 NERA testifying where a lawyer in cross-examination</p> <p>15 pointed out to them that there was a major error in</p> <p>16 their statistical analysis database? And I will even</p> <p>17 add another fact. And in that situation, the expert</p> <p>18 from NERA went back and recalculated based on the</p> <p>19 correction that it, the expert, deemed to be required</p> <p>20 to correct his expert report?</p> <p>21 A. Well, let me put it this way. I don't</p> <p>22 believe I'm aware of that situation. I just didn't</p> <p>23 know about it. That said, I do have a very high view</p> <p>24 of NERA, one; and, two, there were procedures that</p> <p>25 were aimed squarely at avoiding situations like that.</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 Q. Pardon?</p> <p>3 A. There were procedures to avoid exactly</p> <p>4 this --</p> <p>5 Q. I just asked you whether it occurred.</p> <p>6 A. I was not aware of it.</p> <p>7 MR. SOHN: Objection.</p> <p>8 Q. Well, let me ask you this. Have you ever</p> <p>9 criticized the work of one of your colleagues at NERA</p> <p>10 as a witness for being inaccurate?</p> <p>11 A. That would be correct, including</p> <p>12 Dr. Dunbar.</p> <p>13 Q. Hmm?</p> <p>14 A. Yes.</p> <p>15 Q. You have?</p> <p>16 A. Yes.</p> <p>17 Q. How many times?</p> <p>18 MR. SOHN: The conclusions are inaccurate</p> <p>19 or the data is inaccurate?</p> <p>20 MR. GUIDO: The data.</p> <p>21 A. In terms of the data, I have been opposite</p> <p>22 a NERA --</p> <p>23 Q. I didn't ask you about opposite. I said</p> <p>24 while you were a colleague of someone at NERA.</p> <p>25 A. Well --</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. Yes.</p> <p>3 Q. What did you do with that audit trail</p> <p>4 report when you reviewed it?</p> <p>5 A. That was the extent of the use of that</p> <p>6 data.</p> <p>7 Q. So you just looked at it?</p> <p>8 A. Correct.</p> <p>9 Q. You didn't use the data at all?</p> <p>10 A. I did not.</p> <p>11 Q. Have you ever advised any clients on how</p> <p>12 to hedge against a risk in a convertible debenture?</p> <p>13 A. You mean future price security?</p> <p>14 Q. Yeah. Okay. We'll use --</p> <p>15 A. No.</p> <p>16 Q. No. Have you ever published any articles</p> <p>17 on how to hedge against the risk in convertible -- or</p> <p>18 future price securities?</p> <p>19 A. Not beyond the one that we discussed</p> <p>20 earlier.</p> <p>21 Q. Okay. Have you ever conducted any</p> <p>22 empirical research on the effectiveness of the</p> <p>23 various methods to assess risk in convertible</p> <p>24 debenture?</p> <p>25 A. The answer to that one would probably be</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 MR. SOHN: That's a different question.</p> <p>3 So what's the question?</p> <p>4 A. I'm sorry. I'm a little lost.</p> <p>5 Q. It is not a different question. My</p> <p>6 question is, while you were at NERA, did you ever</p> <p>7 have occasion when you were testifying to point out</p> <p>8 that the data that one of your colleagues had relied</p> <p>9 upon was inaccurate?</p> <p>10 A. You mean when I was at NERA and I was</p> <p>11 testifying the data used by a colleague of mine was</p> <p>12 inaccurate?</p> <p>13 Q. At NERA. It's a simple answer. Yes or</p> <p>14 no.</p> <p>15 A. I don't know what you're referring to.</p> <p>16 Q. So you don't recall?</p> <p>17 A. Correct.</p> <p>18 Q. Now, when you prepared your Exhibit</p> <p>19 Number 3, your review, did you intend it to be</p> <p>20 inclusive of everything you reviewed?</p> <p>21 A. In preparation of this report, yes.</p> <p>22 Q. Well, it says NASDAQ audit trail report</p> <p>23 for Sedona Corp., March 1, 2001 through April 30th,</p> <p>24 2001.</p> <p>25 See that?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 yes.</p> <p>3 Q. And what was it?</p> <p>4 A. To give you a sense, part of the</p> <p>5 conclusion my colleagues and I at NERA arrived at in</p> <p>6 the process of working with these 50 or so companies</p> <p>7 back in 2000, 2001 was that the stock price of</p> <p>8 companies that resort to issuance of future price</p> <p>9 securities tend to decline, and quite substantially</p> <p>10 so, after issuance of future price securities. That</p> <p>11 would have clear implications as to the appropriate</p> <p>12 hedging strategy that one may wish to employ.</p> <p>13 MR. GUIDO: Would the court reporter</p> <p>14 please read back my question.</p> <p>15 (The following is read back by the</p> <p>16 reporter:</p> <p>17 "Question: Okay. Have you ever conducted</p> <p>18 any empirical research on the effectiveness of the</p> <p>19 various methods to assess risk in convertible</p> <p>20 debenture.")</p> <p>21 A. I can't give you a different answer. If</p> <p>22 you want --</p> <p>23 Q. No. Please don't speculate. Just answer</p> <p>24 the question. If you can't answer the question, ask</p> <p>25 me to rephrase the question.</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 A. Then please rephrase the question.</p> <p>3 Q. Okay. Have you ever published any</p> <p>4 scholarly articles on the effectiveness of the</p> <p>5 various methods to hedge the risk in convertible</p> <p>6 debenture?</p> <p>7 A. Not beyond the article we discussed</p> <p>8 earlier today.</p> <p>9 Q. That's the one you did with Caryn</p> <p>10 Schechtman?</p> <p>11 A. And others.</p> <p>12 Q. And others.</p> <p>13 Who were the others? Were they all</p> <p>14 lawyers?</p> <p>15 A. They were attorneys, yes.</p> <p>16 Q. I had planned on this being a little</p> <p>17 earlier in the questions, but what I would like to do</p> <p>18 before I get into the report, I would like to --</p> <p>19 Since I'm a lawyer and you're an economist and</p> <p>20 sometimes we don't speak the same language, is I</p> <p>21 would like to sort of clarify some terms so that I</p> <p>22 understand how you you're using those terms. You</p> <p>23 used the term "market manipulation" in your report.</p> <p>24 Would you please define how you're using that term?</p> <p>25 Let me give you an example of a term.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 financial instrument away from, quote/unquote, its</p> <p>3 true value which would be consistent with the</p> <p>4 fundamentals of that instrument or its issuer.</p> <p>5 Q. Well, isn't the true value of an</p> <p>6 instrument whatever the market price indicates?</p> <p>7 A. Absent manipulation or some other</p> <p>8 technical factors.</p> <p>9 Q. Well, what's true value?</p> <p>10 A. That is the value of an instrument that is</p> <p>11 consistent with the underlying characteristics of the</p> <p>12 instrument and the issuer.</p> <p>13 Q. So it's the underlying characteristics --</p> <p>14 A. Let me give you an example.</p> <p>15 Q. Before you do that, I really want to get</p> <p>16 your definition clear in my mind. Is it -- The true</p> <p>17 value is the value that reflects the fundamentals --</p> <p>18 A. Yes.</p> <p>19 Q. -- of the issuer? Right? Is that what</p> <p>20 you're saying?</p> <p>21 A. And the characteristics of the instrument</p> <p>22 issued.</p> <p>23 Q. And the characteristics of the instrument</p> <p>24 issued. Is that fair? Is that your definition?</p> <p>25 And the manipulation is a process that</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 When you talk about chiropractors, there's</p> <p>3 a statute defines when they get compensated, and it</p> <p>4 talks about that they get compensated for</p> <p>5 manipulation, some kind of manipulation. All right?</p> <p>6 And it's defined as the skillful handling of a</p> <p>7 treatment. Okay? Is that how you're using the term?</p> <p>8 I thought I would give you a Little help.</p> <p>9 A. I appreciate it.</p> <p>10 Q. Hopefully add a little humor to this</p> <p>11 process.</p> <p>12 A. Appreciate that, too.</p> <p>13 Q. Ms. Schechtman refers to that as being</p> <p>14 silly.</p> <p>15 A. Market manipulation in my mind would refer</p> <p>16 to activities that would drive the price of a</p> <p>17 particular financial instrument away from its</p> <p>18 efficient levels.</p> <p>19 Q. From what?</p> <p>20 A. From its efficient levels.</p> <p>21 Q. I'm sorry. I don't understand. It's a</p> <p>22 process --</p> <p>23 A. It would be --</p> <p>24 Q. -- that would drive --</p> <p>25 A. It would drive the price of a particular</p>	<p>1 T. Beloreshki - Direct</p> <p>2 drives the price away from that true value?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Now, what's the function of a stock</p> <p>5 market?</p> <p>6 A. There are a number of functions of the</p> <p>7 marketplace. One is provide liquidity. Another one</p> <p>8 would be price disclosure and efficient allocated</p> <p>9 risk and capital.</p> <p>10 Q. Well, aren't the -- Doesn't the literature</p> <p>11 indicate that the true value of a security is set by</p> <p>12 the marketplace?</p> <p>13 A. And that is generally my view,</p> <p>14 particularly being a former trader, except, as I</p> <p>15 said, in situations when you have either manipulation</p> <p>16 or some other technical factors that come into play.</p> <p>17 Q. Well, I'm sorry, but your answer sounds a</p> <p>18 little circular to me, and that is what you're saying</p> <p>19 is that market manipulation is when it diverges from</p> <p>20 the true market and the true market is diverted when</p> <p>21 there's market manipulation you still haven't</p> <p>22 answered the question for me, what is market</p> <p>23 manipulation, or am I just being ignorant?</p> <p>24 A. No. I wouldn't say that part, but I am</p> <p>25 afraid I can't give you a better explanation than I</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 did.</p> <p>3 Q. Other than the circular answer?</p> <p>4 MR. SOHN: Objection.</p> <p>5 A. I don't believe it was circular. At least</p> <p>6 in my mind it is not.</p> <p>7 Q. Well, what kind of activities would move</p> <p>8 the price of a security from its true value?</p> <p>9 A. One example would be what is referred to</p> <p>10 as cornering the market.</p> <p>11 Q. Pardon?</p> <p>12 A. What is referred to as cornering the</p> <p>13 market.</p> <p>14 When a market participant is allowed to</p> <p>15 have, let's say, inordinate market power which may</p> <p>16 allow that market participant to affect the price of</p> <p>17 a particular security or commodity.</p> <p>18 Q. Okay. What else?</p> <p>19 A. Another one that comes to mind and</p> <p>20 actually comes from a -- from a case I worked on very</p> <p>21 early in my career with Fred Dunbar was a</p> <p>22 manipulation investigation of a brokerage firm based</p> <p>23 in Chicago which was involved in short selling of a</p> <p>24 particular stock, and one of the allegations there</p> <p>25 was that that brokerage would do transactions at the</p>	<p>1 T. Beloreshki - Direct</p> <p>2 in beneficial ownership. Or is that too legal?</p> <p>3 A. That's a little legal for me, yes.</p> <p>4 Q. Buy and sell to yourself. What else?</p> <p>5 A. I'm sure there's more.</p> <p>6 Q. Have you ever heard of match trades?</p> <p>7 A. Match trades. I have, and I can't recall</p> <p>8 exactly what it is.</p> <p>9 Q. Have you ever heard of structuring</p> <p>10 transactions so you double report the value of a</p> <p>11 transaction to the market?</p> <p>12 A. That, I had not heard. No. I'm not aware</p> <p>13 of -- of that type of manipulation.</p> <p>14 I'm -- I'm aware that there is a reporting</p> <p>15 issue of market volume particularly when it goes</p> <p>16 through a market maker, then each transaction could</p> <p>17 be double reported, so one has to be aware of that.</p> <p>18 But manipulation, I have not been involved in a</p> <p>19 situation where somebody has structured a transaction</p> <p>20 for the purpose of double counting.</p> <p>21 Q. All right. But you have heard of a</p> <p>22 situation where someone trades through a market maker</p> <p>23 and it results in double reporting to the market?</p> <p>24 A. Correct, but that is not in a manipulation</p> <p>25 context. It's simply a function of the way the</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 close both in order to insert information into the</p> <p>3 marketplace and in order to protect itself against</p> <p>4 margin calls from the exchange.</p> <p>5 Q. Okay.</p> <p>6 A. So that would be another example.</p> <p>7 Q. Okay. What else?</p> <p>8 A. I've heard of situations where an analyst</p> <p>9 would issue analyst reports, positive or negative,</p> <p>10 typically negative, in order to insert incorrect</p> <p>11 information into the marketplace.</p> <p>12 Q. So an analyst would issue a false report?</p> <p>13 A. Yes.</p> <p>14 Q. What else?</p> <p>15 A. Another potential manipulation situation</p> <p>16 is if you have, say, wash sales with the idea of</p> <p>17 simulating higher liquidity in the marketplace than</p> <p>18 actually exists.</p> <p>19 Q. What's -- what's a wash sale?</p> <p>20 A. When you essentially do both buy and sell</p> <p>21 transactions simultaneously in order to inflate the</p> <p>22 value.</p> <p>23 Q. You buy and sell to yourself.</p> <p>24 A. Effectively.</p> <p>25 Q. Or you buy and sell, but there's no change</p>	<p>1 T. Beloreshki - Direct</p> <p>2 marketplace works.</p> <p>3 Q. I understand.</p> <p>4 If someone structured the transaction</p> <p>5 through a market maker in order to double report the</p> <p>6 market, in your view, wouldn't that be market</p> <p>7 manipulation?</p> <p>8 MR. SOHN: Objection to form.</p> <p>9 A. I don't know. I'll have to investigate</p> <p>10 that.</p> <p>11 Q. Well, I thought you said that the wash</p> <p>12 sales project false information into the market?</p> <p>13 A. First, you have to get a sense of whether</p> <p>14 and what kind of information was injected into the</p> <p>15 marketplace, one; and, two, whether that information</p> <p>16 had any material impact on the marketplace, so I</p> <p>17 don't want to separate the two.</p> <p>18 Q. But what you did testify to is market</p> <p>19 manipulation is the introduction of false information</p> <p>20 into the marketplace?</p> <p>21 MR. SOHN: Objection.</p> <p>22 A. No. That's not correct.</p> <p>23 Q. No?</p> <p>24 Well, what's false about -- what's market</p> <p>25 manipulation about a wash trade?</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 A. We were talking about various ways in</p> <p>3 which a market participant, a nefarious one, may</p> <p>4 choose to inject false information to the</p> <p>5 marketplace, so wash sales would be one of those</p> <p>6 ways.</p> <p>7 Q. And that would report some volume into the</p> <p>8 market that you believe was a false intrajection into</p> <p>9 the market?</p> <p>10 A. Correct. Potentially.</p> <p>11 Q. And my question for you is in this</p> <p>12 situation where someone trades to the market maker</p> <p>13 for the purpose of double reporting, the sales to the</p> <p>14 market maker into the market, is that market</p> <p>15 manipulation?</p> <p>16 A. Not necessarily.</p> <p>17 Q. Why not necessarily?</p> <p>18 A. As I gave you the definition, my</p> <p>19 definition of market manipulation, you also have to</p> <p>20 have a situation where the price has been moved away</p> <p>21 from its efficient level.</p> <p>22 Q. I thought that you said that with wash</p> <p>23 sales that it was market manipulation, in your view,</p> <p>24 because it intrajected a false impression of</p> <p>25 liquidity into the market.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 minute. I'm just asking you about what a -- it's a</p> <p>3 test of the likelihood of the hypothesis having</p> <p>4 occurred. Is that a fair assessment?</p> <p>5 A. It could be used to test various</p> <p>6 hypothesis.</p> <p>7 Q. And is it tested by determining whether or</p> <p>8 not a null hypothesis can be rejected?</p> <p>9 A. Correct.</p> <p>10 MR. GUIDO: We'll take a five-minute</p> <p>11 break.</p> <p>12 THE VIDEOGRAPHER: The time is 12:59.</p> <p>13 We're going off the record. This marks the end of</p> <p>14 Tape Number 2.</p> <p>15 (Whereupon, a luncheon recess is taken.)</p> <p>16 THE VIDEOGRAPHER: The time is 1:33.</p> <p>17 We're back on the record. This is Tape Number 3.</p> <p>18 Q. Mr. Beloreshki, I would like to double</p> <p>19 back a little bit before we get into the statistical</p> <p>20 terms with my colleagues and go back to the</p> <p>21 definition of market manipulation, and I just want to</p> <p>22 ask you some questions and get your answers to those.</p> <p>23 Remember I asked you the hypothetical</p> <p>24 about the chiropractor. So we'll put that one aside.</p> <p>25 Is market manipulation, is it activity including buys</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 A. That would not be a correct statement.</p> <p>3 Q. Now, you refer to the use of regression</p> <p>4 analyses in your report. I'll come back to the</p> <p>5 market manipulation issue later. You refer to</p> <p>6 regression analyses as a method to determine</p> <p>7 something in your report. What is that something?</p> <p>8 A. Regression analyses in general are used in</p> <p>9 order to determine relationship between variables, so</p> <p>10 those would be the somethings.</p> <p>11 Q. Pardon?</p> <p>12 A. So if you're interested in whether or not</p> <p>13 there's a relationship between one variable, say, a</p> <p>14 dependent variable, and a number of other variables,</p> <p>15 one of the statistical tools that you may use is a</p> <p>16 regression analysis.</p> <p>17 Q. Well, is the purpose of the regression</p> <p>18 analysis methodology that you use to determine the</p> <p>19 likelihood that a hypothesis is correct?</p> <p>20 A. A regression analysis would test a</p> <p>21 hypothesis, whether a hypothesis is correct or not.</p> <p>22 The interpretation of likelihood, I'm having a little</p> <p>23 problem with. We talk about confidence intervals and</p> <p>24 the like.</p> <p>25 Q. I'll get to the confidence intervals in a</p>	<p>1 T. Beloreshki - Direct</p> <p>2 and sells the results in a change in the market price</p> <p>3 of a security? Is that how you're using the term?</p> <p>4 A. It would involve the activities that would</p> <p>5 impact the price of the underlying securities away</p> <p>6 from its true level.</p> <p>7 Q. So is it activity, whether it's a buy or a</p> <p>8 sell, that would result in a change in the market</p> <p>9 price of the security away from what you refer to as</p> <p>10 the true value?</p> <p>11 A. I wouldn't confine it solely to buys and</p> <p>12 sells.</p> <p>13 Q. Okay. What else could it include?</p> <p>14 A. Well, as we discussed, you -- Well, I</p> <p>15 don't want to say you, but one presumes the</p> <p>16 manipulator may seek to inject false information into</p> <p>17 the marketplace via other vehicles.</p> <p>18 Q. That's in addition to this?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. Now, could it be that -- So when</p> <p>21 you're saying that second point, is it activity</p> <p>22 that's aimed at creating a trading or appearance of</p> <p>23 trading in a security?</p> <p>24 A. I'm not sure I follow.</p> <p>25 Q. Well, you talked about efforts to make the</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 price behave in a manner that it wouldn't if it were</p> <p>3 reflecting its true value. That's one. Right?</p> <p>4 A. Yes.</p> <p>5 Q. And then the other, you said interjecting</p> <p>6 clause behavior, and I'm just trying to clarify what</p> <p>7 that means. Is that activity that gives the</p> <p>8 appearance of creating trading in a security that</p> <p>9 does not occur in the course of determining its true</p> <p>10 value?</p> <p>11 MR. SOHN: Objection to form.</p> <p>12 A. Well, that -- that's your definition.</p> <p>13 I -- I don't -- I don't believe I can give an</p> <p>14 exhaustive definition that would cover anything that</p> <p>15 could potentially be manipulation, so --</p> <p>16 Q. All right. But activities aimed at</p> <p>17 creating a false appearance of liquidity or price,</p> <p>18 would that be market manipulation?</p> <p>19 MR. SOHN: Objection.</p> <p>20 A. Two things. At least two things. One is</p> <p>21 that, again, that particular definition excludes the</p> <p>22 idea of having an impact in the marketplace and, two,</p> <p>23 I don't know whether affecting the price and</p> <p>24 liquidity are the only vehicles to affect market</p> <p>25 manipulation.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 identifying the signs of one, one thing that I'll be</p> <p>3 looking for is data that are they're indicative of a</p> <p>4 material impact on the marketplace from whatever</p> <p>5 might be alleged.</p> <p>6 Q. Are you saying "price"?</p> <p>7 A. Market price.</p> <p>8 Q. So your definition is that it's activity</p> <p>9 that would drive the price of the security away from</p> <p>10 its true value. Is that the definition as --</p> <p>11 A. At this point I'm afraid I've given you</p> <p>12 ten definitions. I don't know. I have given you as</p> <p>13 good a definition as I have -- you know, we've had a</p> <p>14 number of answers there.</p> <p>15 Q. I'm sorry. I am still confused. Look at</p> <p>16 Exhibit Number 4.</p> <p>17 MR. SOHN: His report?</p> <p>18 MR. GUIDO: His report.</p> <p>19 Q. And I want to direct your attention on</p> <p>20 Page 2. The second paragraph at the top, you say in</p> <p>21 your conclusion in the bottom of the second</p> <p>22 paragraph, "Rhino did not pursue a manipulative</p> <p>23 strategy aimed at artificially depressing the price</p> <p>24 of Sedona's stock."</p> <p>25 Is that your conclusion?</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 Q. I didn't ask you whether it was inclusive.</p> <p>3 I just asked you whether it was one example of it.</p> <p>4 A. I was still saying no, to the extent you</p> <p>5 also need to have an impact in the marketplace.</p> <p>6 Q. So that -- So it's important to have an</p> <p>7 impact for there to be market manipulation, either</p> <p>8 increasing the volume or increasing the price?</p> <p>9 A. I don't believe that increasing the volume</p> <p>10 by itself would have an impact on -- would</p> <p>11 necessarily have an impact on the price.</p> <p>12 Q. But interjecting false information about</p> <p>13 the volume, would that in and of itself by</p> <p>14 interjecting that false information, would that be,</p> <p>15 in your view, market manipulation?</p> <p>16 A. Not necessarily to the extent that you</p> <p>17 presumably could have a situation where you are</p> <p>18 injecting false information, but that information</p> <p>19 fails to produce an impact in the marketplace.</p> <p>20 Q. Are you saying that's not market</p> <p>21 manipulation?</p> <p>22 A. I'm not saying -- Look, I'm not -- I'm not</p> <p>23 pretending to give you the legal definition of what</p> <p>24 market manipulation is, but, as I said, market</p> <p>25 manipulation, at least the way I'll go about</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. That was not -- That is not the</p> <p>3 conclusion.</p> <p>4 Q. No? Why not?</p> <p>5 A. I believe you misread it.</p> <p>6 Q. Hmm?</p> <p>7 A. I believe you misread the conclusion.</p> <p>8 Q. Well, why -- why isn't your conclusion</p> <p>9 that Rhino did not pursue a manipulative strategy</p> <p>10 aimed at artificially depressing the price of Sedona</p> <p>11 stock?</p> <p>12 A. Let me read the entire sentence.</p> <p>13 Q. Pardon?</p> <p>14 A. Can I read the entire sentence?</p> <p>15 Q. Yes.</p> <p>16 A. "The facts that the trading activity of</p> <p>17 Rhino was consistent with legitimate profit</p> <p>18 maximizing motives and that the vast majority of the</p> <p>19 decline in Sedona's stock price occurred before Rhino</p> <p>20 began trading in Sedona's common stock demonstrate</p> <p>21 that Rhino did not pursue and had no rational to</p> <p>22 pursue -- artificial depressing the price of Sedona</p> <p>23 stock."</p> <p>24 Q. I understand. Okay?</p> <p>25 But isn't your conclusion that Rhino did</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 not pursue a manipulative strategy aimed at</p> <p>3 artificially depressing the price of this stock?</p> <p>4 A. My conclusion is that data do not support</p> <p>5 the idea or the allegation that Rhino pursued a</p> <p>6 manipulative strategy.</p> <p>7 Q. That data did not support the conclusion</p> <p>8 that Rhino engaged in a manipulative strategy. Is</p> <p>9 that what you're saying?</p> <p>10 A. The allegation, yes.</p> <p>11 Q. The data did not support the conclusion --</p> <p>12 or the allegation that Rhino engaged in a</p> <p>13 manipulative strategy.</p> <p>14 Okay. Now I want to go back to my</p> <p>15 statistical questions for you, and that is we were</p> <p>16 talking about hypotheses, I think, the hypothesis and</p> <p>17 the null hypothesis in a regression analysis, and I</p> <p>18 think you testified that the way of regression</p> <p>19 analysis determines whether or not the hypothesis is</p> <p>20 significant -- and that can be determined by various</p> <p>21 correlations -- is by determining whether you can</p> <p>22 exclude the null hypothesis. Is that a fair</p> <p>23 characterization?</p> <p>24 A. No.</p> <p>25 Q. Okay. Well, what is your characterization</p>	<p>1 T. Beloreshki - Direct</p> <p>2 trading, whether or not transactions on behalf of</p> <p>3 Rhino were executed, whether those were buys or sells</p> <p>4 as a subset of those. In addition to those variables</p> <p>5 related to the volume of observed trading, and in</p> <p>6 addition to that variables relating to the liquidity</p> <p>7 of the marketplace, so these were the variables that</p> <p>8 a priori were thought of as potential candidates to</p> <p>9 explain the variability in the underlying stock</p> <p>10 price.</p> <p>11 So at that point we essentially specified</p> <p>12 a number of family of alternative regression models,</p> <p>13 basically think of it as a number of tests, testing</p> <p>14 various regression specifications and, in addition to</p> <p>15 that, we formulated a number of time frames that one</p> <p>16 might want to perform those analyses over, and those</p> <p>17 were based on objective factors that an economist</p> <p>18 would take into consideration.</p> <p>19 Q. Well, that's very fine, but I don't think</p> <p>20 you answered my question. My question is, what was</p> <p>21 the hypothesis that you were testing?</p> <p>22 A. There are a number of hypotheses that are</p> <p>23 being simultaneously tested. That is the point of</p> <p>24 the regression analysis, and these include whether or</p> <p>25 not there's a relationship between the returns of the</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 of what a statistical analysis that you conducted</p> <p>3 regression analysis that you conducted here did?</p> <p>4 A. Are we talking only about the regression</p> <p>5 analysis presented?</p> <p>6 Q. Only about the regression analysis.</p> <p>7 A. We performed what are known -- We actually</p> <p>8 perform a battery of what are known as linear</p> <p>9 regressions.</p> <p>10 Q. Pardon?</p> <p>11 A. Linear regressions.</p> <p>12 Q. Okay.</p> <p>13 A. Which are rather common and typically used</p> <p>14 in the industry for purposes like those, and those</p> <p>15 were formulated or the models were specified with the</p> <p>16 goal of identifying possible ways that manipulation</p> <p>17 would come out or indicators of manipulation would</p> <p>18 come out, so the first step which was taken -- and</p> <p>19 that was taken many, many years ago, was to think</p> <p>20 about what type of variables may explain what type of</p> <p>21 variables related to Rhino's trading in addition to</p> <p>22 market variables may potentially explain some portion</p> <p>23 of the variation in the underlying stock price.</p> <p>24 So the variables that we settled at some</p> <p>25 point were variables related to physical presence of</p>	<p>1 T. Beloreshki - Direct</p> <p>2 underlying stock and market factors and whether or</p> <p>3 not there was a relationship between the returns of</p> <p>4 the underlying stock and the variables that I just</p> <p>5 talked about that potentially could explain the</p> <p>6 valuation in these returns.</p> <p>7 Q. Well, the variables, whether it be --</p> <p>8 whether Badian I was trading or not trading, that was</p> <p>9 one of the variables, I think. Whether he was</p> <p>10 selling or not selling was another variable. Whether</p> <p>11 he was buying or not buying was another variable that</p> <p>12 you mentioned. Whether or not he engaged in</p> <p>13 transactions or not engaged in transactions was</p> <p>14 another variable. But all of those are variables</p> <p>15 about Badian's trading activities. Correct?</p> <p>16 MR. SOHN: Objection to form.</p> <p>17 A. All variables we have used are variables</p> <p>18 related to Rhino's trading tickets.</p> <p>19 Q. Weren't you trying to determine whether or</p> <p>20 not -- using all of these variables, whether Badian's</p> <p>21 trading activities affected Sedona's stock price?</p> <p>22 Wasn't that the hypothesis that you were testing for?</p> <p>23 A. As I just said, there were multiple</p> <p>24 hypotheses being tested here.</p> <p>25 Q. One of the hypothesis is whether or not he</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 sold had an impact on the price. Right? You did</p> <p>3 five regression analysis, Mr. Beloreshki. One of</p> <p>4 them considered sales. Right?</p> <p>5 A. I am --</p> <p>6 MR. SOHN: Objection.</p> <p>7 A. -- not certain what you're referring to</p> <p>8 first --</p> <p>9 Q. I didn't say first. I said one of them.</p> <p>10 A. Sales. What do you mean by sales?</p> <p>11 Q. Badian selling stock, Sedona stock.</p> <p>12 A. That would be incomplete. Badian was</p> <p>13 buying and selling stock.</p> <p>14 Q. I understand.</p> <p>15 Well, what difference did it make whether</p> <p>16 there was a relationship between Badian trading stock</p> <p>17 and the price of the stock?</p> <p>18 A. I do apologize.</p> <p>19 Q. I gather you are having trouble.</p> <p>20 Let's take a look at Exhibit -- Exhibit</p> <p>21 Number 13. In particular -- Let's just use 13A. See</p> <p>22 the various columns running across the page?</p> <p>23 A. I do.</p> <p>24 Q. Okay. One of them says any Rhino trading,</p> <p>25 doesn't it?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 NASDAQ?</p> <p>3 A. Did the fact of Rhino's presence in the</p> <p>4 marketplace have a statistically significant impact,</p> <p>5 yes.</p> <p>6 Q. So that's the hypothesis?</p> <p>7 A. Correct.</p> <p>8 Q. The second were Rhino purchases --</p> <p>9 A. Yes.</p> <p>10 Q. That's testing whether or not when Rhino</p> <p>11 made purchases, did that have an effect on the Sedona</p> <p>12 price. Right?</p> <p>13 A. Purchases and sale. Yes.</p> <p>14 Q. So that's the hypothesis?</p> <p>15 A. Correct.</p> <p>16 Q. For Rhino sales, okay.</p> <p>17 And the days that it sold was the</p> <p>18 hypothesis they were trying to determine whether or</p> <p>19 not Rhino sales had an impact on the market in a</p> <p>20 statistically significant way?</p> <p>21 A. Yes.</p> <p>22 Q. And the same thing for Rhino transfers.</p> <p>23 Correct?</p> <p>24 A. Yes.</p> <p>25 Q. And the same thing for Rhino principal.</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 A. Yes, it does.</p> <p>3 Q. What does that refer to?</p> <p>4 A. That refers to an indicator variable that</p> <p>5 flags any occasion when Rhino was trading.</p> <p>6 Q. Okay. Now, is the hypothesis that's being</p> <p>7 tested with that regression as reflected in that</p> <p>8 column, whether any Rhino trading had an impact on</p> <p>9 Sedona's price?</p> <p>10 A. Whether this impact was statistically</p> <p>11 significant, yes.</p> <p>12 Q. Okay. So that's the hypothesis that</p> <p>13 you're testing?</p> <p>14 A. Yes. I agree with you, sir. It's just</p> <p>15 that also testing in this regression is the</p> <p>16 hypothesis what a NASDAQ --</p> <p>17 Q. In each of these regressions, you factored</p> <p>18 out the impact of NASDAQ. Correct?</p> <p>19 A. Yes. So --</p> <p>20 Q. So it's a two-variable, one-sided --</p> <p>21 right?</p> <p>22 A. It's a two variable analysis.</p> <p>23 Q. So the hypothesis that's being tested is</p> <p>24 did Rhino's trading have an impact on Sedona's price?</p> <p>25 That's the hypothesis, factoring out the impact of</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Correct?</p> <p>3 A. Correct.</p> <p>4 Q. And the same thing for net daily shares</p> <p>5 transacted as a percentage of total reported volume.</p> <p>6 A. Regression Number 4, yes.</p> <p>7 Q. Now, let's just -- Let's just do any Rhino</p> <p>8 trading. Okay? Let's go back to the first one. The</p> <p>9 hypothesis is did Rhino trading have an impact in</p> <p>10 Sedona's stock price in a statistically significant</p> <p>11 way. That's the hypothesis. Correct?</p> <p>12 A. I believe I answered that question. The</p> <p>13 hypothesis is, did the presence of Rhino in the</p> <p>14 marketplace for Sedona stock have an impact on</p> <p>15 Sedona's stock price.</p> <p>16 Q. What's the null hypothesis?</p> <p>17 A. The null hypothesis is that the</p> <p>18 coefficient in front of that indicated variable is</p> <p>19 zero.</p> <p>20 Q. No. What's the null hypothesis that's</p> <p>21 being determined, not what's the result of the</p> <p>22 regression? What is the null --</p> <p>23 A. I just gave you the answer.</p> <p>24 Q. So it's zero. What does the zero reflect?</p> <p>25 A. I have no idea what you're talking about.</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 Q. You said regression one is zero. Right?</p> <p>3 A. I did not say regression one is zero.</p> <p>4 Q. I thought you said zero. Excuse me. I</p> <p>5 may be wrong.</p> <p>6 A. Okay. At this point --</p> <p>7 Q. Hmm?</p> <p>8 A. At this point we're at cross-purposes.</p> <p>9 Can we start this conversation again?</p> <p>10 Q. The question is, what is the null</p> <p>11 hypothesis of the hypothesis that when Rhino is a</p> <p>12 presence in the market it has an impact on the price?</p> <p>13 What's the null hypothesis that you're trying to</p> <p>14 exclude with that analysis?</p> <p>15 A. I'm not trying to exclude anything.</p> <p>16 Q. Okay.</p> <p>17 A. The null hypothesis is that the</p> <p>18 coefficient related to the variable in any Rhino</p> <p>19 trading is zero.</p> <p>20 Q. So the correlation means there is no</p> <p>21 correlation?</p> <p>22 A. Not what I said.</p> <p>23 Q. Okay. What does that the zero mean?</p> <p>24 A. Zero.</p> <p>25 Q. Just zero? Zero has no meaning in this</p>	<p>1 T. Beloreshki - Direct</p> <p>2 inference can be drawn that X exists?</p> <p>3 MR. SOHN: Objection to form.</p> <p>4 A. First, correlation is different than</p> <p>5 significance, and I don't believe that these</p> <p>6 statistics would make inferences about existence.</p> <p>7 Q. What? Why not?</p> <p>8 A. I'm lost in your question.</p> <p>9 Q. Maybe I'm misunderstanding how the formula</p> <p>10 works, but it seems to me that you're comparing two</p> <p>11 variables, a dependent variable and an independent</p> <p>12 variable, to determine whether or not a third thing</p> <p>13 occurs. Correct? Isn't that what a statistical</p> <p>14 regression analysis does?</p> <p>15 A. I'm not sure I understand the question.</p> <p>16 What it does is it tries to determine whether or not</p> <p>17 there is a linear relationship between the dependent</p> <p>18 variable and the various independent variables.</p> <p>19 Q. Right. And if you come out with a 95</p> <p>20 percent -- confidence, is that the right term? 95</p> <p>21 percent confidence?</p> <p>22 A. What is the question? I'm sorry.</p> <p>23 Q. What does 95 percent refer to to you when</p> <p>24 you use it in the context of a regression analysis?</p> <p>25 A. Typically -- and I can't help but guess</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 context?</p> <p>3 A. I gave you the meaning of your question.</p> <p>4 I don't know where you're going.</p> <p>5 Q. What was the meaning? I'm sorry. I may</p> <p>6 be dense, but I missed it.</p> <p>7 A. The hypothesis, again, is that the</p> <p>8 coefficient related to that variable is equal to</p> <p>9 zero.</p> <p>10 Q. Well, let me give you a hypothetical.</p> <p>11 Okay? Maybe it will make it a little easier for us.</p> <p>12 Suppose you wanted to know whether X existed. Okay?</p> <p>13 By doing your regression analysis between Y and Z.</p> <p>14 Please bear with me. You're the mathematician. I'm</p> <p>15 not.</p> <p>16 A. I used to be. Yes.</p> <p>17 Q. And suppose you obtain a 95 percent</p> <p>18 correlation when you do that. What does a 95 percent</p> <p>19 correlation tell us? To help you even further, does</p> <p>20 a 95 percent correlation --</p> <p>21 A. Correlation is a linear measure -- is a</p> <p>22 measure of linear co-dependence between two</p> <p>23 variables.</p> <p>24 Q. So if you find a 95 percent correlation or</p> <p>25 confidence, does that support the statement that an</p>	<p>1 T. Beloreshki - Direct</p> <p>2 what you're -- trying to tell you is 95 percent</p> <p>3 typically refers to a confidence level.</p> <p>4 Q. Okay. And when I look at Exhibit 13A,</p> <p>5 when you look at these percentages, you talk in terms</p> <p>6 of significance.</p> <p>7 A. Correct.</p> <p>8 Q. So it's a confidence level that something</p> <p>9 exists, that a relationship exists between two</p> <p>10 variables. Is that fair enough?</p> <p>11 A. Yes.</p> <p>12 Q. So if you get a 95 percent -- what is it,</p> <p>13 significance percentage? What do you call it, the</p> <p>14 correlation?</p> <p>15 A. That would be 95 percent confidence.</p> <p>16 Q. 95 percent confidence. So now we've got</p> <p>17 it clear what the term is, so if you get a 95 percent</p> <p>18 confidence, using my hypothetical, the relationship</p> <p>19 between the Y and Z and it results in an answer that</p> <p>20 there's a 95 degree confidence that X exists. Okay?</p> <p>21 MR. SOHN: 95 degree?</p> <p>22 Q. 95 degree confidence that X exists?</p> <p>23 A. I don't understand what you mean by X</p> <p>24 exists. I have no idea what you mean by that.</p> <p>25 Q. I'm trying to use abstract terms. Don't</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 mathematicians use abstract terms? I'm trying to get</p> <p>3 away from this report. I'm trying to get you to talk</p> <p>4 about the theory. Okay?</p> <p>5 A. Sir, you're using abstract terms and I</p> <p>6 have sworn testimony.</p> <p>7 Q. Pardon?</p> <p>8 A. I can't give you abstract answers.</p> <p>9 Q. You can answer hypotheticals, can't you?</p> <p>10 A. I'm doing my best, but I don't</p> <p>11 understand --</p> <p>12 Q. Hypothetical is if you want to determine</p> <p>13 whether or not X exists, suppose you want to</p> <p>14 determine whether X exists and to do that you want to</p> <p>15 do a statistical regression analysis of the</p> <p>16 relationship between Y and Z. Okay? And suppose you</p> <p>17 end up with a result of a 95 percent confidence level</p> <p>18 after doing that regression analysis. What does that</p> <p>19 tell you?</p> <p>20 MR. SOHN: Objection.</p> <p>21 Q. Can you answer the question?</p> <p>22 A. I cannot answer the question.</p> <p>23 Q. What if you do not get a 95 percent</p> <p>24 confidence level? What does that tell you?</p> <p>25 MR. SOHN: Objection.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 show -- and the results turn out that you get a 95</p> <p>3 percent confidence level, does that show you that any</p> <p>4 Rhino trading with 95 degree -- 95 percent</p> <p>5 confidence, had an impact on Sedona's stock price?</p> <p>6 MR. SOHN: Objection.</p> <p>7 A. First to clear --</p> <p>8 Q. I'm just giving you a hypothetical.</p> <p>9 A. It is a hypothetical, but it's based on</p> <p>10 something we actually know, so --</p> <p>11 Q. It's not something you may be familiar</p> <p>12 with, and maybe, you know, you -- it's easier for you</p> <p>13 to deal with concrete matters than abstract matters?</p> <p>14 A. Except that your hypothetical is built on</p> <p>15 the opposite result in the report.</p> <p>16 If you -- if you run a statistical test</p> <p>17 and the statistical test came up with an indication</p> <p>18 that the coefficient in front of that variable was</p> <p>19 significant to 95 percent confidence level, that</p> <p>20 means that if you were to repeat that test a number</p> <p>21 of times, a hundred times, 95 of those results would</p> <p>22 come up roughly the same, and 5 percent of the time</p> <p>23 you would reject the hypothesis when the null is</p> <p>24 true.</p> <p>25 Q. You would reject the null hypothesis?</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 A. Same, answer, sir. I do not understand</p> <p>3 your question.</p> <p>4 Q. In my hypothetical, what is the null</p> <p>5 hypothesis?</p> <p>6 A. About the existence of some X, I have no</p> <p>7 idea.</p> <p>8 Q. The null hypothesis is that X does not</p> <p>9 exist. Or is the null hypothesis that you can't</p> <p>10 demonstrate that X exists with the regression</p> <p>11 analysis?</p> <p>12 A. At this point I'm willing to call myself</p> <p>13 dense, but I do not understand.</p> <p>14 Q. Pardon?</p> <p>15 A. I do not understand.</p> <p>16 Q. You just don't have a clue, do you, what</p> <p>17 I'm talking about?</p> <p>18 MR. SOHN: Objection.</p> <p>19 A. I do not understand the question as you</p> <p>20 have framed it, sir.</p> <p>21 Q. Okay. Let's go back to any trading, any</p> <p>22 Rhino trading since you did that statistical</p> <p>23 analysis. If you got a 95 percent confidence level,</p> <p>24 okay? Take that -- just take that as a hypothetical</p> <p>25 -- with any Rhino trading in Sedona prices, can you</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. When it actually is true.</p> <p>3 Q. When -- I'm sorry. I missed the last -- I</p> <p>4 have a hard time hearing you sometimes.</p> <p>5 A. All I'm saying is that 95 percent</p> <p>6 confidence interval is not -- does not give you a</p> <p>7 guarantee.</p> <p>8 Q. I didn't ask you for a guarantee. I'm</p> <p>9 just asking what it told you.</p> <p>10 A. Well, sir, I'm answering your question and</p> <p>11 you're interrupting.</p> <p>12 Q. Okay. So answer my question.</p> <p>13 A. What is your question?</p> <p>14 Q. My question is, what does the 95 percent</p> <p>15 confidence level tell you in my hypothetical about</p> <p>16 the relationship of Rhino trade -- any Rhino trading</p> <p>17 to Sedona's stock price?</p> <p>18 A. I believe I just gave you that answer.</p> <p>19 Q. Please give it to me again because I</p> <p>20 didn't understand you.</p> <p>21 A. Of course. If you have a result that</p> <p>22 shows that a particular coefficient differs from,</p> <p>23 say, zero, if this is the way you have set up your</p> <p>24 null hypothesis and that the -- and that that</p> <p>25 difference is at 95 percent significance level, that</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 generally means that if you were to get a hundred</p> <p>3 samples from the same population and rerun this test,</p> <p>4 you'll get the same result 95 percent of the time.</p> <p>5 Q. Well, what is the null hypothesis of my</p> <p>6 hypothetical?</p> <p>7 A. If I follow you correctly, it is that the</p> <p>8 coefficient in front of any Rhino -- associated with</p> <p>9 the variable on any Rhino trading is zero.</p> <p>10 Q. Well, let me give you my hypothetical.</p> <p>11 Okay? Maybe it will clarify. You do any correlation</p> <p>12 between any Rhino trading and Sedona stock price and</p> <p>13 you come up with a confidence level of 65 percent.</p> <p>14 What does that tell you about the relationship of</p> <p>15 Rhino trading to Sedona stock price?</p> <p>16 A. There's a significant chance that what</p> <p>17 you're observing is due to chance.</p> <p>18 Q. Does -- If you come up with the 65 percent</p> <p>19 confidence level in my hypothetical, does it tell you</p> <p>20 that Rhino's trading did not have an impact on</p> <p>21 Sedona's stock?</p> <p>22 A. What it does tell you is that you would</p> <p>23 fail to reject the null hypothesis.</p> <p>24 Q. But not that the null hypothesis is true.</p> <p>25 Right?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 hypothesis is correct by some degree of confidence.</p> <p>3 No?</p> <p>4 A. I don't know -- no.</p> <p>5 Q. Well, how do you prove -- if you were</p> <p>6 comparing any Rhino trading to Sedona stock price,</p> <p>7 okay, in a regression analysis, what result would you</p> <p>8 have to get from the correlation to prove that</p> <p>9 Rhino's trading did not have an impact on Sedona's</p> <p>10 stock?</p> <p>11 A. First, statistics doesn't deal with</p> <p>12 proofs. We cannot prove or disprove anything.</p> <p>13 Q. Well, you demonstrate something by 95</p> <p>14 percent confidence, don't you?</p> <p>15 A. Demonstrate something -- I'm not sure what</p> <p>16 you mean by "demonstrate something." You may have a</p> <p>17 result that has associated with it 95 percent</p> <p>18 confidence level. Whether or not you are</p> <p>19 demonstrating something, that's a different point.</p> <p>20 Q. Right. Now, with regard to my</p> <p>21 hypothetical, any Rhino trading versus Sedona stock</p> <p>22 price, what confidence level do you have to reach to</p> <p>23 be able to say that with 95 degree confidence,</p> <p>24 Rhino's trading did not have an effect on Sedona</p> <p>25 stock?</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 A. Correct.</p> <p>3 Q. If -- Let's take the hypothetical one step</p> <p>4 further, and let's say that you do this analysis</p> <p>5 between any Rhino trading and Sedona stock and you</p> <p>6 come up with a confidence level that is less than</p> <p>7 zero, a negative number. What does that tell you</p> <p>8 about the null hypothesis?</p> <p>9 MR. SOHN: Objection.</p> <p>10 A. I have no idea what you're saying.</p> <p>11 Q. You have no idea. Have you ever heard of</p> <p>12 the zero correlation in statistical analyses?</p> <p>13 A. Zero correlation?</p> <p>14 Q. Yes.</p> <p>15 A. Yes.</p> <p>16 Q. What does that refer to?</p> <p>17 A. As I said correlation is a measure of</p> <p>18 linear codependence between two variables and it may</p> <p>19 well be that variables can be uncorrelated.</p> <p>20 Q. And if you come up with a negative</p> <p>21 correlation, what does that tell you?</p> <p>22 A. Roughly speaking in the stock world, that</p> <p>23 when the return of one stock goes up, the other one</p> <p>24 is going down and vice versa.</p> <p>25 Q. It essentially says that the null</p>	<p>1 T. Beloreshki - Direct</p> <p>2 MR. SOHN: Objection.</p> <p>3 A. Generally speaking, economists use</p> <p>4 confidence interval -- confidence levels of 90, 95,</p> <p>5 99.</p> <p>6 Q. I understand that. But what confidence</p> <p>7 level do you have to have to support the conclusion</p> <p>8 that any Rhino trading did not have an effect on</p> <p>9 Sedona's stock by a -- an acceptable degree of</p> <p>10 confidence?</p> <p>11 MR. SOHN: Objection to form.</p> <p>12 A. I just gave you the three levels of</p> <p>13 confidence that are typically used. I personally</p> <p>14 don't tend to subscribe to the 90 degree -- to the 90</p> <p>15 percent confidence level idea, but 95 or 99.</p> <p>16 Q. Okay. Fine.</p> <p>17 Did any of your regressions that you did</p> <p>18 show that the activity that you were measuring -- and</p> <p>19 there are four different activities, independent</p> <p>20 variables, being the trading, the Rhino trading</p> <p>21 activity which you refer to.</p> <p>22 Taking each of those, did any of your</p> <p>23 regression analysis show by 95 degree confidence that</p> <p>24 the trading that you were measuring did not affect</p> <p>25 Sedona's price?</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 MR. SOHN: Object to form.</p> <p>3 A. First, as I testified earlier, we</p> <p>4 performed a battery or a family of tests, so if you</p> <p>5 were to analyze the results of our regressions</p> <p>6 properly, then you cannot reach the conclusion that</p> <p>7 any of these variables were significant at 95 percent</p> <p>8 confidence level.</p> <p>9 Q. The null hypothesis is not 95 percent --</p> <p>10 confident.</p> <p>11 A. I don't understand.</p> <p>12 Q. I'm sorry.</p> <p>13 I'm looking at these -- There's six on</p> <p>14 this chart, 13A, I'm looking at. There's six</p> <p>15 regression analyses. Okay?</p> <p>16 A. No. That's not true.</p> <p>17 Q. Excuse me. There are four. Okay. I'm</p> <p>18 sorry.</p> <p>19 There are four.</p> <p>20 A. Yes.</p> <p>21 Q. And some of them include various factors</p> <p>22 and some only include one factor.</p> <p>23 A. Correct.</p> <p>24 Q. And, with regard to the four regressions</p> <p>25 that are reflected on this page, did any one of them</p>	<p>1 T. Beloreshki - Direct</p> <p>2 we failed to reject the null hypothesis in our</p> <p>3 analyses.</p> <p>4 Q. Well, failure to reject means one thing.</p> <p>5 Right?</p> <p>6 A. It means what it means.</p> <p>7 Q. And proving the null hypothesis is</p> <p>8 another. Correct?</p> <p>9 A. As I said earlier, statistics is not -- or</p> <p>10 regression analysis cannot be used to prove</p> <p>11 something.</p> <p>12 Q. Well, it can be used to demonstrate to</p> <p>13 with a 95 degree confidence?</p> <p>14 A. That's a different --</p> <p>15 Q. Isn't it true that none of these</p> <p>16 regression formulas demonstrate with 95 degree</p> <p>17 confidence that Rhino's trading did not have an</p> <p>18 impact on Sedona's stock?</p> <p>19 MR. SOHN: Objection to form.</p> <p>20 A. I can't give you a different answer than</p> <p>21 what I did give you. The null hypothesis is that --</p> <p>22 tests whether or not Rhino's trading did have an</p> <p>23 impact.</p> <p>24 Q. Well, you're saying that the null</p> <p>25 hypothesis that you couldn't reject is that -- you</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 demonstrate the existence of the null hypothesis;</p> <p>3 i.e., that Sedona's activity -- I mean, Badian's</p> <p>4 activity, or you say Rhino's activity, had no effect</p> <p>5 on Sedona's stock price to 95 degree confidence?</p> <p>6 MR. SOHN: Objection to form.</p> <p>7 A. All of the regression analyses we have</p> <p>8 performed, including the four on this page, failed to</p> <p>9 reject the hypothesis that Rhino's trading had a</p> <p>10 material impact on Sedona stock price.</p> <p>11 Q. I'm sorry. Will you rephrase that?</p> <p>12 MR. SOHN: Objection.</p> <p>13 A. No.</p> <p>14 (The last answer is read back by the</p> <p>15 reporter.)</p> <p>16 Q. They failed to reject that Sedona's</p> <p>17 trading -- I mean, Rhino's trading -- had an impact</p> <p>18 on Sedona's stock price. Is that what you're saying?</p> <p>19 A. That's my answer.</p> <p>20 Q. Did any of the regressions show that --</p> <p>21 did any of the regressions show that Rhino's trading</p> <p>22 did not have an impact on Sedona's stock price to 90</p> <p>23 degree confidence?</p> <p>24 A. The null hypothesis that we are testing is</p> <p>25 that Rhino's trading did have an impact, and that --</p>	<p>1 T. Beloreshki - Direct</p> <p>2 couldn't demonstrate that the null hypothesis had</p> <p>3 been rejected in your correlations. Isn't that</p> <p>4 right?</p> <p>5 A. I -- sir, at this point I'm interpreting</p> <p>6 your questions, but they are not clear. So I am</p> <p>7 doing my best, but I would be amiss if I said that I</p> <p>8 understand them.</p> <p>9 Q. Well, was it your conclusion that Rhino</p> <p>10 did not engage in a manipulative strategy aimed at</p> <p>11 artificially depressing the price of Sedona's shares?</p> <p>12 A. My conclusion was that the data do not</p> <p>13 support a conclusion that Rhino's trading affected</p> <p>14 Sedona's stock price.</p> <p>15 Q. That the data was what -- inconclusive,</p> <p>16 did you say?</p> <p>17 A. The data failed to support the allegation</p> <p>18 of manipulation, in part because it failed to support</p> <p>19 the idea that Rhino trading had a material impact on</p> <p>20 Sedona stock price.</p> <p>21 Q. But the data did not support the</p> <p>22 conclusion that Rhino did not pursue a manipulative</p> <p>23 strategy. Isn't that correct?</p> <p>24 A. I stand by my previous answer. I don't --</p> <p>25 Q. You just don't know. I mean, it seems to</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 me it's a fairly simple question. Did Rhino's</p> <p>3 traders not artificially depress the price of</p> <p>4 Sedona's shares?</p> <p>5 A. As I said, we cannot prove or disprove</p> <p>6 anything using statistical methods.</p> <p>7 Q. You can't -- You can't -- okay. It says</p> <p>8 here, "The economic analysis and empirical evidence</p> <p>9 demonstrates that Rhino did not pursue a manipulative</p> <p>10 strategy aimed at artificially depressing the price</p> <p>11 of Sedona shares."</p> <p>12 That's a statement of a conclusion.</p> <p>13 A. That is a statement of a conclusion and it</p> <p>14 very clearly states in the beginning that this</p> <p>15 conclusion is based on statistical analyses, and this</p> <p>16 is the way you interpret statistical analyses, not a</p> <p>17 hundred percent proofs, but for what they are, tests</p> <p>18 of hypotheses.</p> <p>19 Q. Really? Really?</p> <p>20 Now, if you don't have a 95 degree</p> <p>21 confidence level -- which you think is the</p> <p>22 appropriate level -- correct?</p> <p>23 A. It's the one generally used.</p> <p>24 Q. Okay, and it's the one you're accepting,</p> <p>25 right?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. Sir, your question was whether I can</p> <p>3 create significance, and I was making the point that</p> <p>4 I cannot create significance.</p> <p>5 Q. Can you -- can the studies create</p> <p>6 significance?</p> <p>7 A. No.</p> <p>8 Q. They can't? Why do you use the term then,</p> <p>9 denote significance at 5 percent in Exhibit 13A?</p> <p>10 A. It's a term of art.</p> <p>11 Q. Okay. What does the term of art mean to</p> <p>12 you, nothing?</p> <p>13 A. Do we have to shout at each other?</p> <p>14 Q. I'm sorry.</p> <p>15 A. Sir, as I said, there are confidence</p> <p>16 levels. The typical one is 95 percent, and this is</p> <p>17 the way it is used in statistics. It is used to</p> <p>18 reject or fail to reject a particular null</p> <p>19 hypothesis.</p> <p>20 Q. So if you get below 95 percent, okay? You</p> <p>21 fail to reject the null hypothesis? Is that a fair</p> <p>22 conclusion?</p> <p>23 A. At 95 percent confidence level, yes.</p> <p>24 Q. All right. And if you get below 95</p> <p>25 percent, have you demonstrated the existence of the</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 If you don't have a 95 degree confidence</p> <p>3 level, doesn't it only tell you that the data doesn't</p> <p>4 support an inference to 95 degree of confidence that</p> <p>5 Sedona's trading had an effect on the stock price?</p> <p>6 MR. SOHN: Objection to form.</p> <p>7 A. The data does not allow to reject a null</p> <p>8 hypothesis which would mean that Rhino's trading had</p> <p>9 a material impact on Sedona's stock price.</p> <p>10 Q. So, in other words, the data doesn't</p> <p>11 exclude the null hypothesis that Rhino's trading did</p> <p>12 not have an impact effect on Sedona's stock price?</p> <p>13 A. We can't prove or disprove anything.</p> <p>14 Q. Okay.</p> <p>15 A. Okay?</p> <p>16 Q. But you can -- you can create inferences.</p> <p>17 Right?</p> <p>18 A. I can or cannot?</p> <p>19 Q. Or you can create significance? Okay?</p> <p>20 A. No. I cannot create significance.</p> <p>21 Q. Really? Why do you use the term</p> <p>22 "significance" in Exhibit 13A then, if you can't</p> <p>23 prove it? It says, denotes significance of five</p> <p>24 percent. Why did you use significance if you can't</p> <p>25 demonstrate it?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 null hypothesis?</p> <p>3 A. The existence of -- I have failed to</p> <p>4 reject the null hypothesis.</p> <p>5 Q. Okay. But you don't prove the existence</p> <p>6 of the null hypothesis?</p> <p>7 A. The null hypothesis is something that is</p> <p>8 postulated for the purpose of the test. I can either</p> <p>9 reject it or fail to reject it. These are the only</p> <p>10 two things I can do with it.</p> <p>11 Q. That's all you can do. Okay. You can't</p> <p>12 do anything more than fail to reject it?</p> <p>13 A. I'll think very hard about it, but I don't</p> <p>14 think I can.</p> <p>15 Q. Well, can you come up with an analysis to</p> <p>16 prove -- a statistical analysis to prove the null</p> <p>17 hypothesis that Rhino's trading did not have an</p> <p>18 effect on Sedona's stock?</p> <p>19 A. I'll consider it.</p> <p>20 Q. All right. I'm asking you to do it now.</p> <p>21 A. Can I prove it now? Can I prove it now,</p> <p>22 statistically?</p> <p>23 Q. Can you tell me how you would?</p> <p>24 A. As I said -- and even your experts have it</p> <p>25 in their report, that statistical methods cannot be</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 used to prove or disprove anything.</p> <p>3 Q. Well, I think as I read the reports -- if</p> <p>4 you come up in your report, if you come up with a 95</p> <p>5 degree statistical significance, that that's an</p> <p>6 important finding. Is that fair?</p> <p>7 A. A potentially important finding.</p> <p>8 Q. Huh?</p> <p>9 A. Potentially important finding.</p> <p>10 Q. Potentially. And that -- can you come up</p> <p>11 with a potentially methodology to determine whether</p> <p>12 or not any Rhino trading did not have an effect --</p> <p>13 effect on Sedona's stock price?</p> <p>14 A. Again, I'll -- I'll have to think about</p> <p>15 it. Probably I'll leave it to your experts.</p> <p>16 Q. Okay -- well, okay. But your analysis</p> <p>17 don't do that, do they? Your regression?</p> <p>18 A. My analysis do what they do.</p> <p>19 Q. Pardon?</p> <p>20 A. My analysis do what they do.</p> <p>21 Q. I understand, but I'm asking you what do</p> <p>22 you think they do? You're the expert.</p> <p>23 A. We test the hypothesis whether or not</p> <p>24 Rhino's trading had a statistically significant</p> <p>25 impact on Sedona's stock price, and we failed to</p>	<p>1 T. Beloreshki - Direct</p> <p>2 stock price.</p> <p>3 Q. Okay. Did the data result in a</p> <p>4 statistically significant finding that Sedona's stock</p> <p>5 price did not have -- I mean, Rhino's trading did not</p> <p>6 have an impact on Sedona's stock price?</p> <p>7 A. I believe I've answered this one numerous</p> <p>8 times by now.</p> <p>9 Q. It seems to me it's a very simple answer,</p> <p>10 yes or no. Did it do something or didn't it do it?</p> <p>11 A. What we did was to test the hypothesis</p> <p>12 whether or not Rhino's trading had a material</p> <p>13 statistically significant impact on Sedona's stock</p> <p>14 price. We failed to reject that hypothesis. That's</p> <p>15 what we did.</p> <p>16 Q. Okay. Now, I'm asking you is what you</p> <p>17 did -- can one draw the conclusion that there was --</p> <p>18 that there was a statistically significant</p> <p>19 relationship that demonstrates that Rhino's trading</p> <p>20 did not have an impact on Sedona's stock price? I'm</p> <p>21 asking you whether or not, based on your own data,</p> <p>22 whether that supports that conclusion.</p> <p>23 A. The data support that conclusion to the</p> <p>24 extent that the results of our analyses are what they</p> <p>25 are.</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 reject that hypothesis.</p> <p>3 Q. You failed to reject --</p> <p>4 A. Correct.</p> <p>5 Q. -- the hypothesis that Sedona's -- or</p> <p>6 Rhino's trading did not have a significant impact.</p> <p>7 No?</p> <p>8 A. I believe you misspoke, but --</p> <p>9 Q. That I misspoke or you misspoke?</p> <p>10 MR. GUIDO: Why don't you read back the</p> <p>11 last answer, please.</p> <p>12 (The last answer is read back by the</p> <p>13 reporter.)</p> <p>14 Q. Failed to reject the hypothesis that</p> <p>15 Rhino's trading had a significant impact on Sedona's</p> <p>16 stock price. Is that what you said? That's what I</p> <p>17 just heard the court reporter read back.</p> <p>18 A. Correct.</p> <p>19 Q. So, in other words, you found that there</p> <p>20 was a statistically significant relationship between</p> <p>21 Rhino's trading and Sedona's stock price?</p> <p>22 A. Just the opposite. We were not able to</p> <p>23 find a statistically significant relationship. The</p> <p>24 data did not establish a statistically significant</p> <p>25 relationship between Rhino's trading and Sedona's</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. In other words, you can't answer the</p> <p>3 question, can you?</p> <p>4 A. Well, given that you have decided that I</p> <p>5 can't, I probably can't.</p> <p>6 Q. Pardon?</p> <p>7 A. I can't give you a better answer, sir, to</p> <p>8 what I have given you so far.</p> <p>9 Q. So you don't know whether or not your</p> <p>10 analysis demonstrates to a significantly --</p> <p>11 significant degree that Rhino's trading did not have</p> <p>12 an impact on Sedona's stock? You can't tell?</p> <p>13 MR. SOHN: Objection.</p> <p>14 A. Our analyses are aimed at determining</p> <p>15 whether or not the trading had statistically</p> <p>16 significant impact, and the data failed to show that.</p> <p>17 That's as much as I can do as a statistician.</p> <p>18 Q. Okay. Did the analysis that you do, was</p> <p>19 it an attempt to determine whether or not there was a</p> <p>20 significantly -- significant relationship that</p> <p>21 demonstrated Rhino's trading did not affect Sedona</p> <p>22 stock price?</p> <p>23 MR. SOHN: Object. This is maybe the 15th</p> <p>24 time you've asked this question.</p> <p>25 A. Sir, if I could give you a better answer,</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 I would.</p> <p>3 Q. So you don't know?</p> <p>4 A. I have given you answers to that question</p> <p>5 many times. I -- I can't --</p> <p>6 MR. GUIDO: Let's take a five-minute</p> <p>7 break.</p> <p>8 THE VIDEOGRAPHER: The time is 2:30.</p> <p>9 We're going off the record. This marks the end of</p> <p>10 Tape Number 2.</p> <p>11 (Whereupon, a recess is taken.)</p> <p>12 THE VIDEOGRAPHER: The time is 2:42.</p> <p>13 We're back on the record. This is Tape Number 4.</p> <p>14 BY MR. GUIDO:</p> <p>15 Q. I have three concluding questions along</p> <p>16 this line, and I want to ask them very carefully and</p> <p>17 I want you to think about them very carefully.</p> <p>18 The first is you have stated that you</p> <p>19 failed to reject the null hypothesis that Rhino had</p> <p>20 no effect on Sedona's prices. Is that correct?</p> <p>21 A. Based on the regression analyses and the</p> <p>22 statistical analyses we performed. Correct.</p> <p>23 Q. Now, based on the regression analyses that</p> <p>24 you did do, can you conclude with a high degree of</p> <p>25 confidence that Rhino had no effect on Sedona's</p>	<p>1 T. Beloreshki - Direct</p> <p>2 have nothing to do with it, but I'm asking the</p> <p>3 question and I want a yes-or-no answer. If you</p> <p>4 refuse to answer, state that you refuse to answer,</p> <p>5 but you don't have the right to determine whether</p> <p>6 your intentions have anything to do with this case or</p> <p>7 your testimony in this case, so please answer my</p> <p>8 question.</p> <p>9 Did you intend to test that Rhino's</p> <p>10 trading had no effect on Sedona's stock price?</p> <p>11 MR. SOHN: Objection to that admonition.</p> <p>12 A. The test we performed --</p> <p>13 Q. I didn't ask you about the test you</p> <p>14 performed. I asked you did you intend to test the</p> <p>15 hypothesis that Rhino's trading had no effect on</p> <p>16 Sedona's stock price?</p> <p>17 MR. SOHN: Mr. Guido, you need to let the</p> <p>18 witness answer the question.</p> <p>19 MR. GUIDO: The witness was not answering</p> <p>20 my question.</p> <p>21 Q. The question was did you intend to test</p> <p>22 the hypothesis that Rhino's trading had no effect on</p> <p>23 Sedona's stock price.</p> <p>24 A. It is difficult for me to answer that</p> <p>25 question given the use of the word "intend." We were</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 prices?</p> <p>3 A. I cannot make a conclusion beyond what is</p> <p>4 in the report, which is that we failed to reject the</p> <p>5 hypothesis.</p> <p>6 Q. That's all I asked you. Was it -- based</p> <p>7 on the regression results that you did perform, can</p> <p>8 you today testify that you conclude with a high</p> <p>9 degree of confidence that Rhino had no effect on</p> <p>10 Sedona's prices?</p> <p>11 A. Same answer.</p> <p>12 Q. So you can't -- you can't answer that</p> <p>13 question.</p> <p>14 A. No. I gave an answer to that question</p> <p>15 numerous times.</p> <p>16 Q. When you did your analysis that is</p> <p>17 reflected in Exhibit Number 4 --</p> <p>18 A. Yes.</p> <p>19 Q. -- your expert report, did you intend to</p> <p>20 determine with a high degree of confidence that</p> <p>21 Rhino's trading had no effect on Sedona's stock</p> <p>22 price?</p> <p>23 A. My intentions have nothing to do with it.</p> <p>24 My intentions have nothing to do with it.</p> <p>25 Q. So I'm asking -- You may not think they</p>	<p>1 T. Beloreshki - Direct</p> <p>2 asked to perform statistical analysis to determine</p> <p>3 whether or not a statistical relationship can be</p> <p>4 determined between Rhino's trading and Sedona's stock</p> <p>5 price, which is what we did.</p> <p>6 Q. Okay. Were you asked to test the</p> <p>7 hypothesis that Rhino's trading had no effect on</p> <p>8 Sedona's stock price?</p> <p>9 A. I just described what we were asked to do.</p> <p>10 And --</p> <p>11 Q. That's not what I asked you. I asked</p> <p>12 you --</p> <p>13 MR. SOHN: Please let the witness finish</p> <p>14 his answers.</p> <p>15 MR. GUIDO: I understand that, but the</p> <p>16 witness is being evasive and I want an answer or I'm</p> <p>17 going to the Court. We're going to take a break and</p> <p>18 I'm going to the Court and have the court reporter</p> <p>19 read the questions to the judge and I'm going to ask</p> <p>20 the judge to order him to answer the questions.</p> <p>21 Now, answer the questions!</p> <p>22 MR. SOHN: Mr. Guido, there's no reason to</p> <p>23 scream at the witness, first of all.</p> <p>24 MR. GUIDO: All right. Fine. I don't</p> <p>25 think I'm screaming.</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 A. You are.</p> <p>3 Q. I'm speaking with a loud voice.</p> <p>4 A. No. I'm not speaking --</p> <p>5 Q. I'm sorry. I have a hearing problem.</p> <p>6 Sometimes I don't --</p> <p>7 A. I appreciate that, sir.</p> <p>8 Q. Okay. So the question is, did you intend</p> <p>9 to test the hypothesis that Rhino's trading had no</p> <p>10 effect on Sedona's stock price?</p> <p>11 MR. SOHN: You've asked the question three</p> <p>12 times already.</p> <p>13 A. As I said, I cannot answer this question</p> <p>14 given your use of the word "intend." The scope of</p> <p>15 the studies is defined in the report, and I could</p> <p>16 quote you from there.</p> <p>17 Q. Well, did you account to test the</p> <p>18 hypothesis that Rhino's trading had no effect on</p> <p>19 Sedona's stock price?</p> <p>20 MR. SOHN: Now it's about the 20th time</p> <p>21 you've asked the question.</p> <p>22 A. The best way I can answer this question is</p> <p>23 that this question is addressed in -- the statistical</p> <p>24 analysis we did which approached it from the side of</p> <p>25 whether or not one can establish a relationship</p>	<p>1 T. Beloreshki - Direct</p> <p>2 proposed what and when, but in all likelihood, it</p> <p>3 would have been me to the extent that I felt the</p> <p>4 piece could benefit from somebody with legal</p> <p>5 expertise, which is something I clearly lack.</p> <p>6 Q. Why do you think it would benefit from</p> <p>7 having someone with legal expertise to participate?</p> <p>8 A. Because of the focus of the piece and the</p> <p>9 extent that there was -- you know, I work in</p> <p>10 securities litigation.</p> <p>11 Q. Pardon?</p> <p>12 A. I work in securities litigation. I'm a</p> <p>13 financial economist. I'm not a litigator.</p> <p>14 Q. Okay. So why did you think it was</p> <p>15 important to have the input of lawyers?</p> <p>16 A. I just gave you the answer. I'm an</p> <p>17 economist; I work in securities litigation; there are</p> <p>18 people who know more than I do.</p> <p>19 Q. Was the paper presented at any forum?</p> <p>20 A. Not that I know of.</p> <p>21 Q. A conference?</p> <p>22 A. Not that I know of.</p> <p>23 Q. Was it published in any way?</p> <p>24 A. It was issued as a NERA working paper at</p> <p>25 the time, and I believe that's about as much as it</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 between Rhino's trading and Sedona's stock price.</p> <p>3 MR. GUIDO: Okay. Let's take a break.</p> <p>4 We're going to call the Court.</p> <p>5 THE VIDEOGRAPHER: We're going off the</p> <p>6 record.</p> <p>7 THE REPORTER: The time is what?</p> <p>8 THE VIDEOGRAPHER: 2:48.</p> <p>9 (Whereupon, a recess is taken.)</p> <p>10 THE VIDEOGRAPHER: The time is 2:54. We</p> <p>11 are back on the record.</p> <p>12 BY MR. GUIDO:</p> <p>13 Q. I would like you take a look at Exhibit</p> <p>14 Number 5 which is The Frontiers of Convertibles</p> <p>15 Financing.</p> <p>16 A. Yes, sir.</p> <p>17 Q. Now, you indicated that you prepared this</p> <p>18 after you had done some earlier work on the question</p> <p>19 of market manipulation and -- convertible debentures.</p> <p>20 Is that a fair characterization?</p> <p>21 A. I believe that is the timing of it.</p> <p>22 Q. And who -- Who proposed that you prepare a</p> <p>23 joint piece on The Frontiers of Convertibles</p> <p>24 Financing?</p> <p>25 A. I don't have a recollection of that, who</p>	<p>1 T. Beloreshki - Direct</p> <p>2 went in terms of formal publication.</p> <p>3 Q. Okay. Now, in the paper, there are a</p> <p>4 number of statements I would like to ask you about,</p> <p>5 and one of them -- This is all about future price of</p> <p>6 securities, and I gather that includes convertible</p> <p>7 debentures such as existed in this case?</p> <p>8 A. That's the focus of the paper, yes.</p> <p>9 Q. And, in fact, you used the Sedona/Rhino</p> <p>10 dispute as one of the examples in this paper.</p> <p>11 Correct?</p> <p>12 A. I don't recall, but if you say so.</p> <p>13 Q. Have you read the paper recently?</p> <p>14 A. I did peruse it last night.</p> <p>15 Q. Huh?</p> <p>16 A. I did go over it last night.</p> <p>17 Q. Did you notice there was some reference to</p> <p>18 the Rhino?</p> <p>19 A. No, I did not.</p> <p>20 Q. Okay.</p> <p>21 Looking at Page 5, you talk about Risks</p> <p>22 Inherent in Future Priced Securities.</p> <p>23 A. Yes.</p> <p>24 Q. One is credit and default risk. What's</p> <p>25 that refer to?</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 A. I apologize. I didn't hear the question.</p> <p>3 Q. On Page 5 --</p> <p>4 A. Yes.</p> <p>5 Q. -- there is a section entitled Risks</p> <p>6 Inherent in Future Priced Securities.</p> <p>7 A. Yes.</p> <p>8 Q. On the next page, one is credit and</p> <p>9 default risk. What is that?</p> <p>10 A. Credit and default risk?</p> <p>11 Q. Yes.</p> <p>12 A. Credit risks generally refer to changes in</p> <p>13 the creditworthiness of the issuer of a particular</p> <p>14 security -- the issuer of a particular security.</p> <p>15 And default refers to the failure of an issuer to</p> <p>16 make full and timely payments of principal and</p> <p>17 interest on its obligations.</p> <p>18 Q. Does every financial transaction have a</p> <p>19 credit and default risk?</p> <p>20 A. In my mind that question translates into</p> <p>21 is the US Treasury entailing credit risk. My</p> <p>22 inclination is to say that just about every</p> <p>23 transaction entails credit risk.</p> <p>24 Q. What about stock -- brokers? Does every</p> <p>25 investment in stock involve a stock price risk?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 level to be trading on NASDAQ?</p> <p>3 A. I believe that's research -- not me</p> <p>4 personally. That's -- I believe I am citing a paper</p> <p>5 by Tyler Shumway on that.</p> <p>6 Q. Who?</p> <p>7 A. I believe the name is Tyler Shumway.</p> <p>8 Q. The delisting bias that you list on Page 6</p> <p>9 in footnote 8?</p> <p>10 A. Oh, yes. Yes. He was a colleague of mine</p> <p>11 at the University of Chicago.</p> <p>12 Q. What did you learn from that? What was</p> <p>13 the delisting criteria in NASDAQ?</p> <p>14 A. The gist of the argument is that when a</p> <p>15 stock gets delisted, then its liquidity would be</p> <p>16 reduced which may result in lower valuations. And in</p> <p>17 addition to that, the bid-ask spread may widen, which</p> <p>18 may entail investor losses as well.</p> <p>19 Q. Isn't it true that the paper is really</p> <p>20 about the consequences of delisting and not what the</p> <p>21 criteria are to determine whether or not that stock</p> <p>22 should be delisted?</p> <p>23 MR. SOHN: The Tyler Shumway paper?</p> <p>24 MR. GUIDO: Yes.</p> <p>25 A. That is correct, I believe.</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 A. I wouldn't go as far as to say every</p> <p>3 investment in stock. It may be --</p> <p>4 Q. Pardon?</p> <p>5 A. It may be a hedge position, so I don't</p> <p>6 know.</p> <p>7 Q. But if you have a position in stock that's</p> <p>8 not hedged, is there stock price risk?</p> <p>9 A. If you're on a hedge, then the P&L would</p> <p>10 move with the market, yes.</p> <p>11 Q. Isn't that what you're talking about here</p> <p>12 in point number 2, an nonhedged stock price position?</p> <p>13 A. Yes.</p> <p>14 Q. Now it also -- it talks about equity</p> <p>15 delisting.</p> <p>16 A. Yes.</p> <p>17 Q. Have you ever studied what the criteria</p> <p>18 the NASDAQ has to keep a stock listed on the NASDAQ?</p> <p>19 A. I wouldn't be able to give you a complete</p> <p>20 listing, but those do relate to the market</p> <p>21 capitalization of the stock to the level of the</p> <p>22 stock. I believe the cutoff is a dollar per share,</p> <p>23 possibly -- other.</p> <p>24 Q. Have you ever done any research on the</p> <p>25 consequences of stock prices not meeting a certain</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. Okay. My question to you is do you know</p> <p>3 what the listing requirements are for NASDAQ in terms</p> <p>4 of maintaining a certain stock price level?</p> <p>5 A. I gave you my understanding. General -- a</p> <p>6 cutoff with respect to market capitalization, minimum</p> <p>7 stock price, and there is a period over which a</p> <p>8 company would be -- they would be allowed to cure any</p> <p>9 deficiencies.</p> <p>10 Q. Okay. Then what was the stock price level</p> <p>11 of the NASDAQ at the time the Sedona transactions</p> <p>12 occurred?</p> <p>13 A. I mean, it varied quite substantially. I</p> <p>14 don't know.</p> <p>15 Q. I'm asking you during the period of time</p> <p>16 covered by the complaint, so let's say that that --</p> <p>17 assume that that is the spring of 2001.</p> <p>18 A. I'm looking at Exhibit 9 of my report.</p> <p>19 Q. It doesn't say, does it?</p> <p>20 A. What?</p> <p>21 Q. It doesn't say anything about the price</p> <p>22 level that you have to maintain to avoid delisting,</p> <p>23 does it? That was my question.</p> <p>24 A. No. If I understood, your question was</p> <p>25 what was the price of Sedona stock in the spring of</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 2001.</p> <p>3 Q. No.</p> <p>4 A. I apologize.</p> <p>5 Q. My question was what was the price level</p> <p>6 that had to be maintained for Sedona stock to be</p> <p>7 traded in the spring of 2001 on NASDAQ? That was my</p> <p>8 question.</p> <p>9 A. It's -- my best answer is it would be a</p> <p>10 dollar, but I may be incorrect on that.</p> <p>11 Q. A dollar.</p> <p>12 A. Yes.</p> <p>13 Q. And where do you get that information?</p> <p>14 A. From memory, which is always a dangerous</p> <p>15 place to go.</p> <p>16 Q. Did you ever listen to any audiotapes that</p> <p>17 were recorded by Refco?</p> <p>18 A. No.</p> <p>19 Q. Did you know any existed?</p> <p>20 A. I do.</p> <p>21 Q. When did you learn that?</p> <p>22 A. Prior to the presentation at the US</p> <p>23 attorney's office and the SEC.</p> <p>24 Q. And did you ever ask to listen to them?</p> <p>25 A. No.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. The task I was asked to perform had to</p> <p>3 deal with data.</p> <p>4 Q. Well, take a look at Page 1 of Exhibit</p> <p>5 Number 4.</p> <p>6 A. Yes.</p> <p>7 Q. We have been retained by counsel for Mr.</p> <p>8 Andreas Badian and asked to perform economic,</p> <p>9 financial, and statistical analyses in order to</p> <p>10 answer the following questions. And bullet point 2:</p> <p>11 What are some of the determinants of the performance</p> <p>12 of Sedona stock in the time period following the</p> <p>13 issuance of such securities?</p> <p>14 You see that?</p> <p>15 A. I do.</p> <p>16 Q. Okay. Is the orders that were placed by</p> <p>17 someone on behalf of Rhino one of the determiners of</p> <p>18 the performance of Sedona's stock price?</p> <p>19 A. I would believe so, and those are</p> <p>20 reflected in the data that we analyzed.</p> <p>21 Q. You're saying that the orders that were</p> <p>22 placed were reflected in the data? That data that</p> <p>23 you have -- and I may be incorrect, is the data of</p> <p>24 executed transactions.</p> <p>25 A. Correct. Correct.</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 Q. Do you know that DLA Piper has transcripts</p> <p>3 of them?</p> <p>4 A. I don't -- My understanding, they have</p> <p>5 access to them; but in what shape or form, I don't</p> <p>6 know.</p> <p>7 Q. Did you ever ask to look at them?</p> <p>8 A. No.</p> <p>9 Q. Did they ever offer them to you?</p> <p>10 A. No.</p> <p>11 Q. Did you know that DLA Piper has audited</p> <p>12 the audiotapes that go with those transcripts?</p> <p>13 A. I don't know.</p> <p>14 Q. You don't know. Did anyone ever tell you?</p> <p>15 A. If they told me, it's likely I would not</p> <p>16 remember --</p> <p>17 Q. Pardon?</p> <p>18 A. I don't know.</p> <p>19 Q. Did you ever ask to listen to the</p> <p>20 audiotapes?</p> <p>21 A. No.</p> <p>22 Q. Why not?</p> <p>23 A. Because the -- the task that I was asked</p> <p>24 to perform had to deal with data.</p> <p>25 Q. Pardon?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. It's not the orders that were placed?</p> <p>3 A. Fair enough. I appreciate the</p> <p>4 distinction. Yes.</p> <p>5 Q. So -- wasn't -- what the orders were one</p> <p>6 of the determinants of the performance of the stock?</p> <p>7 A. Those orders, whatever they may have been,</p> <p>8 those would have been reflected in the actual</p> <p>9 transactions being executed.</p> <p>10 Q. Well, let's look at -- back at Exhibit</p> <p>11 Number 5, Page 6.</p> <p>12 A. Yes.</p> <p>13 Q. The next category is liquidity risk.</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. What do you mean by liquidity risks?</p> <p>17 A. Liquidity generally speaking refers to</p> <p>18 one's ability to monetize its holding in a particular</p> <p>19 security without affecting the marketplace for that</p> <p>20 security.</p> <p>21 Q. Does liquidity refer to the volume that's</p> <p>22 being traded?</p> <p>23 A. Volume could be used as one measure of</p> <p>24 liquidity. I would not equate liquidity and volume.</p> <p>25 Q. Pardon?</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 A. I would not equate liquidity and volume.</p> <p>3 Q. Well, how are you using liquidity in this</p> <p>4 section starting at Page 6, if you're not using what</p> <p>5 the volume is?</p> <p>6 A. I'm using it in the sense that I gave you</p> <p>7 the answer on your preceding question of what my</p> <p>8 understanding of liquidity is.</p> <p>9 Q. Well, I'm -- I'm confused.</p> <p>10 A. I apologize.</p> <p>11 Q. Liquidity is not trading volume, reflected</p> <p>12 in trading volume?</p> <p>13 A. As I said, trading volume may be one</p> <p>14 measure that can be used to gauge liquidity, but it</p> <p>15 is not the only thing that you would need to know or</p> <p>16 to use in order to judge liquidity.</p> <p>17 Q. Okay. What else would you need to know?</p> <p>18 A. You may need to know, say, number of</p> <p>19 market makers that are in the marketplace. You may</p> <p>20 need to know what type of marketplace the security's</p> <p>21 being traded in. You may need to know the</p> <p>22 distribution of that security across investors.</p> <p>23 Q. I'm sorry. The distribution, you say?</p> <p>24 A. Yes.</p> <p>25 Q. All right. Did you attempt to determine</p>	<p>1 T. Beloreshki - Direct</p> <p>2 know the distribution among various investors.</p> <p>3 A. That would be something of interest. Yes.</p> <p>4 Q. Pardon?</p> <p>5 A. Yeah.</p> <p>6 Q. Did you attempt to determine what the</p> <p>7 distribution of Sedona's holdings were among various</p> <p>8 investors?</p> <p>9 A. So, to the extent we were aware of the</p> <p>10 holdings of Rhino, in Sedona stock.</p> <p>11 Q. Other than Rhino?</p> <p>12 A. No.</p> <p>13 Q. Did Rhino hold the stock in its own name?</p> <p>14 A. My sense is that would be in Amro.</p> <p>15 Q. It was held in the name of Amro?</p> <p>16 A. That would be my sense. May be incorrect.</p> <p>17 Q. Not BNC Bach?</p> <p>18 A. I don't know.</p> <p>19 Q. Do you know whether or not there's a</p> <p>20 relationship between BNC Bach and Amro?</p> <p>21 A. I believe there is a relationship.</p> <p>22 Q. Pardon?</p> <p>23 A. I believe there is a relationship. I have</p> <p>24 seen BNC Bach in account statements.</p> <p>25 Q. Do you know what the relationship is?</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 who the market makers were in Sedona stock during the</p> <p>3 period of time you were analyzing the trades?</p> <p>4 A. No.</p> <p>5 Q. Did you determine where Sedona stock was</p> <p>6 traded during that period?</p> <p>7 A. Yes.</p> <p>8 Q. And what did you learn?</p> <p>9 A. NASDAQ.</p> <p>10 Q. On the NASDAQ. Okay.</p> <p>11 What's Island?</p> <p>12 A. It's a trading platform. I probably</p> <p>13 wouldn't be able to tell you a whole lot more than</p> <p>14 that.</p> <p>15 Q. Did you say it was a trading platform?</p> <p>16 A. I don't know a whole lot about Island one</p> <p>17 way or another, so --</p> <p>18 Q. Pardon? You don't know what?</p> <p>19 A. I don't know a whole lot about Island. My</p> <p>20 understanding is it's a trading platform.</p> <p>21 Q. Did you determine whether or not Sedona's</p> <p>22 trades were executed -- on that -- when you did your</p> <p>23 analysis?</p> <p>24 A. No.</p> <p>25 Q. You said the other thing you needed to</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. I don't recall.</p> <p>3 Q. Well, in the data you looked at, did you</p> <p>4 see that there were trades between BNC Bach and Amro</p> <p>5 -- the --</p> <p>6 A. I don't recall.</p> <p>7 Q. Now, next you say litigation contract</p> <p>8 renegotiation risks.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Did you determine whether or not there was</p> <p>12 any litigation or contract renegotiation in Sedona</p> <p>13 stock?</p> <p>14 A. I don't know how to answer that. I mean,</p> <p>15 I was retained in the context of the litigation.</p> <p>16 Q. Pardon?</p> <p>17 A. NERA and then FTI were retained in the</p> <p>18 context of a litigation, so --</p> <p>19 Q. Well, did anyone ever tell you that Sedona</p> <p>20 had refused to honor a conversion letter received</p> <p>21 from Amro?</p> <p>22 A. I believe that's the case.</p> <p>23 Q. When did that occur?</p> <p>24 A. I don't know.</p> <p>25 Q. Well, you indicate that contract</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 renegotiation or litigation could be one of the risks</p> <p>3 that a holder of -- of future priced security. Isn't</p> <p>4 that correct?</p> <p>5 A. It is one of the risks associated with</p> <p>6 these type of instruments, yes.</p> <p>7 Q. Did you attempt to determine what that</p> <p>8 risk was for Sedona?</p> <p>9 A. I must be missing a question here. I was</p> <p>10 retained after there was a litigation to begin with,</p> <p>11 so --</p> <p>12 Q. Did you study the convertible debenture in</p> <p>13 this case?</p> <p>14 A. Yes.</p> <p>15 Q. Did you study the convertible debenture</p> <p>16 agreement to this case?</p> <p>17 A. Yes.</p> <p>18 Q. And did you find that there were</p> <p>19 provisions that applied to when stock could be</p> <p>20 converted or when the debenture could be converted</p> <p>21 into stock?</p> <p>22 A. Correct.</p> <p>23 Q. And what did you determine?</p> <p>24 A. If memory serves me well, that window</p> <p>25 opened March of '01.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. Now, you talk about, I think in your</p> <p>3 report, economically rational behavior.</p> <p>4 A. Yes.</p> <p>5 Q. Okay? Is it economically rational to</p> <p>6 violate an agreement in a convertible debenture?</p> <p>7 A. Let me take the question a little more</p> <p>8 general. It may be rational to breach a contract.</p> <p>9 That's my understanding of it.</p> <p>10 Q. Well, you also in your expert report talk</p> <p>11 about the value of short selling prior to conversions</p> <p>12 as a hedging mechanism. Right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Now, if that is an economically</p> <p>15 rational approach --</p> <p>16 A. Yes.</p> <p>17 Q. -- is it economically rational to agree to</p> <p>18 a covenant not to sell the stock short prior to</p> <p>19 submitting the conversion?</p> <p>20 A. It may well be. Yes.</p> <p>21 Q. Pardon?</p> <p>22 A. It may well be, yes.</p> <p>23 Q. It may be?</p> <p>24 A. May well be. I apologize.</p> <p>25 Q. Well, you testified that the trading</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 Q. Was it March 22nd of '01? 22nd.</p> <p>3 A. I believe you're correct, yes.</p> <p>4 Q. So it's the 22nd. Now prior to that, was</p> <p>5 there a conversion feature?</p> <p>6 A. I do not believe so. Not with respect to</p> <p>7 this instrument.</p> <p>8 Q. Pardon?</p> <p>9 A. Not with respect to this instrument.</p> <p>10 There was another conversion in November of 2000. I</p> <p>11 don't know if you're referring to that.</p> <p>12 Q. I'm asking with regard to the convertible</p> <p>13 debenture that you've addressed in your report, was</p> <p>14 the stock convertible prior to March 22nd?</p> <p>15 A. I'll have to refer to the document.</p> <p>16 Q. So you don't know.</p> <p>17 A. I don't recall.</p> <p>18 Q. You don't recall.</p> <p>19 Were there -- in the document, were there</p> <p>20 restrictions on when stock could be sold short?</p> <p>21 A. I believe so.</p> <p>22 Q. Do you recall what that provision was?</p> <p>23 A. I don't recall the exact nature of the</p> <p>24 provision, but I do know there was a restriction on</p> <p>25 short selling of the stock.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 strategy here was economically rational. Hedging</p> <p>3 strategy I think is what you testified.</p> <p>4 A. Correct.</p> <p>5 Q. Or indicated.</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Now, was Rhino, acting on behalf of</p> <p>8 Amro, acting economically irrational when it agreed</p> <p>9 to a provision not to sell the stock short prior to</p> <p>10 converting?</p> <p>11 A. No. The idea there is there are a number</p> <p>12 of features to these instruments that they're each</p> <p>13 subject to negotiation. So --</p> <p>14 Q. I understand, but you're looking at it</p> <p>15 after the negotiation occurred and after the contract</p> <p>16 was entered into.</p> <p>17 A. Well, if I have a choice between, just to</p> <p>18 give you an example a larger discount and some sort</p> <p>19 of a short selling restriction, versus a smaller</p> <p>20 discount and no restriction on short selling, those</p> <p>21 may be a choice that one might be -- you know, could</p> <p>22 reasonably consider both of them.</p> <p>23 Q. Is it economically rational to have your</p> <p>24 cake and eat it too?</p> <p>25 MR. SOHN: Objection.</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 A. I have no idea what you're talking about.</p> <p>3 Q. Well, is it economically rational to agree</p> <p>4 not to do something with regard to a credit</p> <p>5 instrument, and then do exactly the opposite, in</p> <p>6 violation of that agreement?</p> <p>7 A. As I said --</p> <p>8 MR. SOHN: Objection.</p> <p>9 A. -- contracts do get breached, and on</p> <p>10 occasion such breach can be efficient.</p> <p>11 Q. Economically rational?</p> <p>12 A. Yes.</p> <p>13 Q. Was the agreement ever extended, the</p> <p>14 convertible debenture?</p> <p>15 A. I don't recall.</p> <p>16 Q. You don't know.</p> <p>17 A. I don't recall.</p> <p>18 Q. Did you ever ask to find out whether or</p> <p>19 not it was ever extended?</p> <p>20 A. At one point -- or not -- I would have</p> <p>21 known that. I don't recall.</p> <p>22 Q. You don't recall. Would your view of</p> <p>23 whether or not it was economically rational to breach</p> <p>24 the agreement not to sell short be affected, if you</p> <p>25 learned that during the period of time this stock was</p>	<p>1 T. Beloreshki - Direct</p> <p>2 securities. My general view is that the fact of the</p> <p>3 first issuance of a future priced securities</p> <p>4 instrument is perhaps the most significant to the</p> <p>5 marketplace. The fact that there are subsequent</p> <p>6 issuances serves to confirm that and probably</p> <p>7 reinforce that effect.</p> <p>8 Q. Did FTI recently issue a convertible</p> <p>9 debenture?</p> <p>10 A. No one asked me about that. I don't know.</p> <p>11 Q. You don't know.</p> <p>12 A. No.</p> <p>13 Q. Do you know whether or not it was a future</p> <p>14 price security?</p> <p>15 A. I don't.</p> <p>16 Q. Is FTI a financially insecure company?</p> <p>17 A. I believe FTI is relatively -- either</p> <p>18 double B or triple B, something in that range.</p> <p>19 Q. Double B or triple B, is that a</p> <p>20 financially insecure company?</p> <p>21 A. BBB is the lower grade of the investment</p> <p>22 grade securities, so that's about as much as I can</p> <p>23 give you that.</p> <p>24 Q. Is that a junk bond rating?</p> <p>25 A. BBB is not.</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 shorted, as alleged in this complaint in this action,</p> <p>3 that that -- that the convertible debenture was being</p> <p>4 renegotiated and extended?</p> <p>5 A. Correct me if I'm wrong, but I don't</p> <p>6 believe that short selling is one of the allegations</p> <p>7 in the complaint. So I don't know the violation of</p> <p>8 the short selling provisions or the breach of the</p> <p>9 short selling provisions are part of the complaint.</p> <p>10 Q. I didn't ask you whether or not that was</p> <p>11 being violated. I asked you whether or not short</p> <p>12 selling occurred.</p> <p>13 A. Short selling did occur.</p> <p>14 Q. And was it alleged in the complaint that</p> <p>15 it was in violation of the covenant not to sell</p> <p>16 short? Not whether it was a charged violation, but</p> <p>17 was it alleged to have occurred?</p> <p>18 A. The complaint does occur that short</p> <p>19 selling occurs, yes.</p> <p>20 Q. Now, you indicated that the convertible</p> <p>21 debentures here, there were a series of convertible</p> <p>22 debentures that were issued by Sedona, and to you</p> <p>23 that that's an indication of a declining or a weak</p> <p>24 financial condition in the firm, in Sedona. Right?</p> <p>25 A. Sedona was an issuer of future priced</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. Now look at Exhibit 8. Exhibit 8 of</p> <p>3 Exhibit 4, excuse me. Your tab, exhibit number 8.</p> <p>4 A. Yes.</p> <p>5 Q. Did Sedona issue stock during that period</p> <p>6 of time that's reflected in that chart?</p> <p>7 MR. SOHN: From 1985 to 2003?</p> <p>8 MR. GUIDO: Uh-huh.</p> <p>9 A. I believe the answer is yes.</p> <p>10 Q. Why didn't you include it?</p> <p>11 A. This exhibit reflects --</p> <p>12 Q. Pardon?</p> <p>13 A. This exhibit reflects the number of shares</p> <p>14 outstanding, so that's included.</p> <p>15 Q. Well, I mean you have a bunch of arrows</p> <p>16 here in convertible debentures, but you don't have</p> <p>17 any arrows for stock issuance.</p> <p>18 A. The chart is meant to illustrate the</p> <p>19 significant increase in the number of shares</p> <p>20 outstanding and the issuance of future priced</p> <p>21 securities by Sedona, and incidentally the scale on</p> <p>22 the left-hand side is logarithmic. So that volume of</p> <p>23 outstanding stock increased by a very large factor</p> <p>24 and that was the point of this chart.</p> <p>25 Q. Well, I mean, didn't one of the things</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 that you say that Sedona was a -- was in poor</p> <p>3 financial condition because -- as reflected by the</p> <p>4 fact that it could not raise stock through issuance</p> <p>5 of common stock?</p> <p>6 A. Or regular debt financing.</p> <p>7 Q. But it did issue common stock --</p> <p>8 A. It did issue common --</p> <p>9 Q. -- in this time period, didn't it?</p> <p>10 A. Correct, but a substantial portion of that</p> <p>11 was issued pursuant to future priced security</p> <p>12 agreements.</p> <p>13 Q. Was also a substantial portion of it not</p> <p>14 related to future priced securities?</p> <p>15 A. I'm also aware of purchases, shelf</p> <p>16 purchases at a discount.</p> <p>17 Q. Well, I understand that. But you said</p> <p>18 that here is an entity that could not raise capital</p> <p>19 by issuing common stock, and it ended up doing so</p> <p>20 when you excluded it from your chart.</p> <p>21 MR. SOHN: During what time period are you</p> <p>22 talking about?</p> <p>23 MR. GUIDO: 1985 through 2003.</p> <p>24 A. Well, but this chart -- this chart does</p> <p>25 show the initial public offering.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Let me rephrase that. Were they negotiated</p> <p>3 transactions?</p> <p>4 A. That would be my assumption.</p> <p>5 Q. Why was -- did you ever attempt to</p> <p>6 determine why Amro or Rhino acting on behalf of Amro</p> <p>7 was purchasing Sedona stock in this time period if it</p> <p>8 was a financially vulnerable entity?</p> <p>9 A. One possible reason is --</p> <p>10 Q. I didn't ask you possibilities. I asked</p> <p>11 you did you know?</p> <p>12 A. Do I know what?</p> <p>13 Q. Do you know why it was purchasing the</p> <p>14 stock if, in your view, this entity was a financially</p> <p>15 vulnerable institution?</p> <p>16 A. If your question is whether I knew the</p> <p>17 state of mind of Rhino, no.</p> <p>18 Q. Did you ever ask anybody what their</p> <p>19 intentions were?</p> <p>20 A. No.</p> <p>21 Q. Now with regard to Page 9, you talk about</p> <p>22 Adverse Market Signal.</p> <p>23 A. Page 9 of what document?</p> <p>24 Q. Pardon?</p> <p>25 A. What document are we on?</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 Q. Pardon?</p> <p>3 A. It does show the initial public offering,</p> <p>4 that chart.</p> <p>5 Q. I understand that.</p> <p>6 A. Yes.</p> <p>7 Q. But there are also other stock issuances</p> <p>8 after that, weren't there?</p> <p>9 A. I don't recall.</p> <p>10 Q. You don't recall.</p> <p>11 A. No, I don't.</p> <p>12 Q. Did you ever attempt to figure that out?</p> <p>13 A. I don't recall one way or the other.</p> <p>14 Q. Isn't it true that Amro purchased a</p> <p>15 substantial amount of common stock of Sedona during</p> <p>16 this time period, 1985 through 2003, separate from</p> <p>17 future priced securities?</p> <p>18 A. Correct. That is what I was referring to</p> <p>19 as purchasing actions off the shelf at a discount.</p> <p>20 Q. But there were purchases. Correct?</p> <p>21 A. Yes. I testified to that. Yes.</p> <p>22 Q. And -- and they were purchased at a</p> <p>23 discount to what?</p> <p>24 A. To the prevailing marketplace.</p> <p>25 Q. Now, are -- were those private placements?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. I'm back on Exhibit Number 5. Excuse me.</p> <p>3 See the Adverse Price Signal?</p> <p>4 A. Yes. I do.</p> <p>5 Q. Okay. Now, one of the -- You say that</p> <p>6 news about the negotiation and/or (pending)</p> <p>7 completion of a financing deal may boost albeit</p> <p>8 temporarily the price of liquidity levels of the</p> <p>9 outstanding securities of a company.</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Now, and then it goes on to talk, in the</p> <p>13 next two paragraphs, it talks about corporate finance</p> <p>14 theory and the empirical evidence. Did you do any</p> <p>15 empirical studies yourself of the impact of a future</p> <p>16 priced security on the market?</p> <p>17 A. On the issuance of future priced security,</p> <p>18 yes.</p> <p>19 Q. You did studies yourself?</p> <p>20 A. As a part of a team at NERA, yes.</p> <p>21 Q. Pardon?</p> <p>22 A. As part of a team at NERA, yes.</p> <p>23 Q. Okay. And in what context did you do the</p> <p>24 studies?</p> <p>25 A. The context was that probably SEC</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 investigation in the 2000, 2001 range that we</p> <p>3 discussed --</p> <p>4 Q. Of the 50 securities.</p> <p>5 A. Or so, yes.</p> <p>6 Q. And that -- what did you learn about those</p> <p>7 50 securities with regard to the impact of the</p> <p>8 issuance of the convertible debentures?</p> <p>9 A. It's been awhile since I've seen that</p> <p>10 chart, but I believe that study or that part of the</p> <p>11 study represented what is known as an event study,</p> <p>12 and for those 50 or so companies we performed event</p> <p>13 studies to determine the behavior of their stock</p> <p>14 prices at various points in time before, prior to,</p> <p>15 and subsequent to the first issuance, I believe, of a</p> <p>16 future priced security instrument.</p> <p>17 Q. Okay.</p> <p>18 A. And the findings, as I remember, were that</p> <p>19 these stock prices tended to underperform the</p> <p>20 marketplace substantially during the year prior to</p> <p>21 issuance, and that effect increased in the --</p> <p>22 probably -- year subsequent to the issuance. It</p> <p>23 might have been six months before and six months</p> <p>24 after or one year before and one year after. I don't</p> <p>25 know now.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 apologize.</p> <p>3 It's much easier to read. Sorry.</p> <p>4 So as long as the decline was not</p> <p>5 associated with an event such as corporate</p> <p>6 bankruptcy, refusal to honor the terms of the</p> <p>7 contract, et cetera.</p> <p>8 Q. Okay. Now, it says in the second</p> <p>9 sentence, however, once FPS are converted into common</p> <p>10 shares of the underlying stock, they are exposed to</p> <p>11 the risks of significant stock price decreases.</p> <p>12 A. Yes.</p> <p>13 Q. Okay? After the conversion in this case,</p> <p>14 the Sedona conversion by Amro, in Rhino and Badian's</p> <p>15 direction, did Amro run the risk of price decreases?</p> <p>16 A. Yes. To different degrees. You would</p> <p>17 have at least three components in your position. One</p> <p>18 would be the remaining debenturers, and let's say</p> <p>19 that those have minimal exposure to a stock price</p> <p>20 risk. Let's say that for the sake of argument credit</p> <p>21 risk is not a concern or there will be -- litigation.</p> <p>22 Then you have Rhino's holdings of stock.</p> <p>23 So to the that extent Rhino is long a stock position,</p> <p>24 then they will be exposed to that risk. And finally</p> <p>25 Rhino had warrants which would be exposed to stock</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 Q. So the price increased afterwards? Is</p> <p>3 that right?</p> <p>4 A. Oh, did I say that? I apologize. No.</p> <p>5 The price was decreasing prior to the issuance and</p> <p>6 decreased at a faster pace afterwards.</p> <p>7 Q. Now. Let's go to Page 12. You talk about</p> <p>8 Hedge Against Stock Price and Liquidity Risk. Okay?</p> <p>9 A. Yeah.</p> <p>10 Q. It says until the moment of a conversion</p> <p>11 notice is submitted, FPS investors bear virtually no</p> <p>12 risk of a stock price decline (as long as the decline</p> <p>13 is not associated with an event such as a corporate</p> <p>14 bankruptcy, refusal to honor the terms of the FPS</p> <p>15 contract, etc.)</p> <p>16 Do you see that?</p> <p>17 A. I do see that.</p> <p>18 Q. Now prior to the conversion notice here,</p> <p>19 did Rhino's -- I use Rhino interchangeably with Amro,</p> <p>20 but it's Amro's account that we're talking about.</p> <p>21 Did Amro bear no risk of a price decline?</p> <p>22 A. I'll give you the same answer as the one</p> <p>23 contained in the sentence. As long as that decline</p> <p>24 was not associated with an event of corporate</p> <p>25 bankruptcy or refusal to honor the terms -- I</p>	<p>1 T. Beloreshki - Direct</p> <p>2 price risk as well.</p> <p>3 Q. Okay. So let's just talk about the</p> <p>4 converted shares. When Rhino converted in the spring</p> <p>5 of 2001, didn't it end up with over 800,000 shares of</p> <p>6 stock?</p> <p>7 MR. SOHN: Are you referring to a</p> <p>8 particular day?</p> <p>9 MR. GUIDO: After the four conversions in</p> <p>10 the spring of 2001.</p> <p>11 A. I'm not certain about the number. They</p> <p>12 did end up with long positions at points in time.</p> <p>13 Q. Was it more than a half a million shares?</p> <p>14 A. Again, I'm not certain about a number.</p> <p>15 Q. Okay. But did it have a substantial price</p> <p>16 risk at that point in time?</p> <p>17 MR. SOHN: Objection to form.</p> <p>18 A. I don't know how you define substantial</p> <p>19 price risk, but it did have risks.</p> <p>20 Q. And whatever the risk is would be</p> <p>21 determined by the number of shares?</p> <p>22 Let me rephrase it, make it easier?</p> <p>23 The significance of the risk would be</p> <p>24 determined by the number of shares it had left</p> <p>25 over -- after conversion.</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 A. Correct it would be determined by the size</p> <p>3 of the long of the long position, and, again,</p> <p>4 ignoring the rest of the holdings.</p> <p>5 Q. Now, look at Page 13. It says -- see</p> <p>6 where it says, Allegations of Market Manipulation By</p> <p>7 FPS Defy Economic Logic?</p> <p>8 A. Yes.</p> <p>9 Q. Now, is -- is it fair to say that if by</p> <p>10 pushing down the stock of price -- the price of a</p> <p>11 stock, you can create an advantage under a contract</p> <p>12 that you have to convert a debt to a security into</p> <p>13 that stock?</p> <p>14 MR. SOHN: Objection to form.</p> <p>15 A. What was the question?</p> <p>16 Q. Is it economically rational if you have a</p> <p>17 contractual agreement, to push down the stock of</p> <p>18 price -- price of the stock, in order to take</p> <p>19 advantage of some provision in that contract to your</p> <p>20 financial advantage?</p> <p>21 MR. SOHN: Objection to form.</p> <p>22 A. If one were to ignore everything else,</p> <p>23 perhaps.</p> <p>24 Q. Okay. And what's the everything else?</p> <p>25 A. The fact that your actions would have</p>	<p>1 T. Beloreshki - Direct</p> <p>2 insider trading. Right?</p> <p>3 A. I believe so.</p> <p>4 Q. Are there risks associated with insider</p> <p>5 trading?</p> <p>6 A. I hope there are, yes.</p> <p>7 Q. And one of those is regulatory risks,</p> <p>8 isn't it?</p> <p>9 A. And possibly criminal exposure.</p> <p>10 Q. And one of those is execution risks, isn't</p> <p>11 it?</p> <p>12 A. Correct.</p> <p>13 Q. And one of those is -- it could have a</p> <p>14 negative impact on the value of your other holdings.</p> <p>15 Right?</p> <p>16 A. Yes.</p> <p>17 Q. Pardon?</p> <p>18 A. Yes.</p> <p>19 Q. But people still engage in insider</p> <p>20 trading, don't they?</p> <p>21 A. Correct. What I'm saying here is not that</p> <p>22 nobody would ever engage in insider trading or</p> <p>23 manipulation. There is risk. You're trading</p> <p>24 instrument that if a manipulation-free trading</p> <p>25 strategy is executed, could potentially yield you a</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 consequences related to the value of your position as</p> <p>3 well as create potential exposure to say, regulatory</p> <p>4 investigations. Plus you have risks associated with</p> <p>5 the execution of such strategy.</p> <p>6 Q. Pardon?</p> <p>7 A. Plus you would have risks associated with</p> <p>8 the execution of such a strategy.</p> <p>9 Q. Well, take insider trading. Have you ever</p> <p>10 studied insider trading?</p> <p>11 A. Have I studied -- They didn't offer a</p> <p>12 class on that one.</p> <p>13 Q. Have you ever investigated an insider</p> <p>14 trading allegation?</p> <p>15 A. I have done work related to insider</p> <p>16 trading cases.</p> <p>17 Q. So you know insider trading?</p> <p>18 A. Yes.</p> <p>19 Q. And you had a Series 7 license. Right?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. To get the Series 7 license you</p> <p>22 were taught various things about the trading</p> <p>23 practices.</p> <p>24 A. Yes.</p> <p>25 Q. And one of them you were taught about was</p>	<p>1 T. Beloreshki - Direct</p> <p>2 few hundred percent return annually. This is a</p> <p>3 return that is in my view very difficult, if not</p> <p>4 impossible to replicate otherwise. So the costs</p> <p>5 associated with that manipulation strategy have to</p> <p>6 outweigh that few hundred percent of annualized</p> <p>7 return, and this is where the cost benefit analysis</p> <p>8 comes in.</p> <p>9 Q. Did you ever determine how much was made</p> <p>10 on the trading strategy that was adopted by -- in the</p> <p>11 Sedona stock by Mr. Badian?</p> <p>12 A. I believe such analyses or some version of</p> <p>13 such analyses was performed years ago.</p> <p>14 Q. And didn't it show that there was a profit</p> <p>15 of somewhere around two and a half million dollars?</p> <p>16 A. I don't recall the number.</p> <p>17 Q. But it would be reflected in those papers.</p> <p>18 I think it's called -- it's BP 6 -- and it's a tab</p> <p>19 called P&L analysis?</p> <p>20 A. Okay.</p> <p>21 Q. Now the -- did you also years ago do an</p> <p>22 analysis of a hypothetical trading in the stock?</p> <p>23 A. I may have. I don't know.</p> <p>24 Q. Did you determine that the profits from</p> <p>25 the actual trading were substantially greater than</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 the hypothetical that you had done?</p> <p>3 A. I don't have a recollection of what you're</p> <p>4 referring to.</p> <p>5 Q. Why did you do the hypothetical?</p> <p>6 A. As I said I have no recollection of what</p> <p>7 this analysis was.</p> <p>8 Q. You have no recollection of doing it?</p> <p>9 A. I apologize. I don't.</p> <p>10 Q. Turning to Page 14, look at the paragraph</p> <p>11 that starts: "Clearly, the potential benefits of an</p> <p>12 alleged manipulation strategy depends on one's</p> <p>13 ability to artificially affect stock prices, thereby</p> <p>14 increasing the spread between S average and</p> <p>15 S conversion."</p> <p>16 Okay? Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. It says: "To the extent that this ability</p> <p>19 is in term a function of the liquidity and the depth</p> <p>20 of the marketplace, one would expect that such</p> <p>21 alleged manipulative scheme would be most effective</p> <p>22 when applied to the stock of small and</p> <p>23 illiquidly-traded companies."</p> <p>24 In your report didn't you say that Sedona</p> <p>25 was illiquid?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. You mean of the nature that Drs. Glosten</p> <p>3 and Jones did?</p> <p>4 Q. Yes.</p> <p>5 A. No.</p> <p>6 Q. Have you ever read the literature of a</p> <p>7 price impact model similar to what they had done?</p> <p>8 A. The literature is a rather large body of</p> <p>9 literature. I have reviewed certain papers.</p> <p>10 Q. Yeah? And did you do such an analysis of</p> <p>11 the Sedona transaction?</p> <p>12 A. No, I didn't.</p> <p>13 Q. Why not?</p> <p>14 A. Because I'm not convinced that -- because</p> <p>15 I'm not convinced that such analysis is appropriate.</p> <p>16 In fact, I would say that it is not appropriate in</p> <p>17 the context that we're talking about. One is that it</p> <p>18 uses -- We're interested in a trading over a long</p> <p>19 period of time, days.</p> <p>20 Q. Pardon?</p> <p>21 A. We're interested in trading over a</p> <p>22 substantial period of time. The minimum interval</p> <p>23 that I would guess we could agree is that there are</p> <p>24 five-day conversion periods. So you're interested in</p> <p>25 knowing what happened to that stock over a five-day</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 A. I don't recall.</p> <p>3 Q. Well, was it?</p> <p>4 A. Sedona was a relatively illiquid stock.</p> <p>5 Relatively illiquid.</p> <p>6 Q. Relatively liquid?</p> <p>7 A. Illiquid.</p> <p>8 Q. Illiquid. Okay. And was it a small stock</p> <p>9 in terms of capitalization?</p> <p>10 A. Yes.</p> <p>11 Q. So would it be fair to say that an alleged</p> <p>12 manipulative scheme would be more effective when</p> <p>13 applied to Sedona than to other, larger stocks and</p> <p>14 more liquid stocks?</p> <p>15 MR. SOHN: Objection to form.</p> <p>16 A. It would be difficult for me to see how</p> <p>17 one would be able to execute or move the price of a</p> <p>18 large stock like Goldman.</p> <p>19 Q. Did you ever attempt to do a market price</p> <p>20 model in the Sedona stock?</p> <p>21 A. I believe that the regression analyses</p> <p>22 that we discussed earlier would fall into that</p> <p>23 category.</p> <p>24 Q. Did you ever attempt to do a price impact</p> <p>25 model analysis?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 period.</p> <p>3 So looking into intraday struck me as a</p> <p>4 level of granularity that does not necessarily inform</p> <p>5 what happens or how the stock price behaved for those</p> <p>6 long periods of times that I believe are relevant to</p> <p>7 this investigation, the example being the five-day</p> <p>8 low back periods.</p> <p>9 In addition, an analysis of that</p> <p>10 granularity assumes a level of market efficiency that</p> <p>11 I don't believe has been established. That is, that</p> <p>12 the market price responds instantaneously, Sedona's</p> <p>13 market price responds simultaneously to any user</p> <p>14 information that comes to the marketplace.</p> <p>15 Three, there are various issues related to</p> <p>16 the independence of the various variables used by</p> <p>17 opposing experts.</p> <p>18 Four, the analyses performed assumes no</p> <p>19 new information during, say, the month of March,</p> <p>20 which is certainly not the case here.</p> <p>21 And, five, and perhaps quite importantly,</p> <p>22 that line of analysis ignores other market and</p> <p>23 industry factors which are particularly important</p> <p>24 here. To give you a sense of what I'm talking about,</p> <p>25 NASDAQ fell down somewhere between 15 and 20 percent,</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 if memory serves me right, during the month of March.</p> <p>3 That fact is not a part of the analysis performed.</p> <p>4 Q. Well, let me ask you something. Did</p> <p>5 anybody else ask you this question before your</p> <p>6 deposition today?</p> <p>7 A. Probably not. It is something that I have</p> <p>8 discussed with Steve Prowse.</p> <p>9 Q. With who?</p> <p>10 A. Steve Prowse.</p> <p>11 Q. When did you discuss it?</p> <p>12 A. We had discussed various aspects since we</p> <p>13 received opposing expert reports.</p> <p>14 Q. Pardon?</p> <p>15 A. Since the point in time when received</p> <p>16 opposing expert reports, we have looked at them.</p> <p>17 Q. And did you discuss what your answer would</p> <p>18 be to the question?</p> <p>19 MR. SOHN: Which question?</p> <p>20 Q. My question of whether they attempted to</p> <p>21 use a price impact model and your answer was no and</p> <p>22 you gave, I think, in a very concise way, five</p> <p>23 reasons. Did you discuss that --</p> <p>24 A. Coming in today, I would not have said I</p> <p>25 will give you five reasons. But these are the ones</p>	<p>1 T. Beloreshki - Direct</p> <p>2 and you also talk about company-specific factors such</p> <p>3 as company news, corporate filings, insider trading</p> <p>4 activities.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Now, do you recall in your rebuttal</p> <p>8 report in the Pet Quarters case that the plaintiff's</p> <p>9 expert had used marketwide industry factors in its</p> <p>10 analysis and you were -- you critiqued the use of</p> <p>11 those in the plaintiff's expert's report?</p> <p>12 A. We did have critiques of opposing expert</p> <p>13 analyses. I am not sure I know what you're referring</p> <p>14 to.</p> <p>15 Q. In the rebuttal report, you have indicated</p> <p>16 that the plaintiff's counsel had made generalized</p> <p>17 statements about the performance of other companies</p> <p>18 in comparison to Pet Quarters.</p> <p>19 Do you recall that?</p> <p>20 A. If you could give me the document, I --</p> <p>21 Q. We'll save that until I get to the</p> <p>22 document.</p> <p>23 On your report or your paper, you also</p> <p>24 discuss the other steps that you would recommend as</p> <p>25 an analysis to be taken in addition to statistical</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 that came to mind.</p> <p>3 Q. Did you rehearse that answer?</p> <p>4 A. I'm sorry?</p> <p>5 Q. Did you rehearse the answer you just gave</p> <p>6 to me with anybody?</p> <p>7 A. No.</p> <p>8 Q. Did you discuss it with counsel or</p> <p>9 Mr. Badian?</p> <p>10 A. No.</p> <p>11 Q. Now, when you talked -- When we were</p> <p>12 talking about percentages that are a test of</p> <p>13 reliability and we talked about the significance of</p> <p>14 various terms, did you -- you talked about 95 percent</p> <p>15 confidence interval, and I think you testified that</p> <p>16 there were other confidence intervals.</p> <p>17 A. Yeah. I have seen economic literature</p> <p>18 using or relying on 90 percent, 95, 99.</p> <p>19 Q. So the literature, some literature</p> <p>20 recognizes 90 percent confidence level?</p> <p>21 A. Correct.</p> <p>22 Q. All right. Now, the -- Now, on Page 18 of</p> <p>23 your paper that you did with Ms. Schechtman, it talks</p> <p>24 about factors impacting the price of underlying stock</p> <p>25 and you talk about marketwide and industry factors,</p>	<p>1 T. Beloreshki - Direct</p> <p>2 regression analysis.</p> <p>3 Do you recall that?</p> <p>4 A. I do.</p> <p>5 Q. Pardon?</p> <p>6 A. I do.</p> <p>7 Q. Now, in effect, that's on Page 18 and 19</p> <p>8 of Exhibit Number 5?</p> <p>9 A. Yes.</p> <p>10 Q. Okay?</p> <p>11 Now, in your performance of the analysis</p> <p>12 that you did for Sedona, did you do any of those</p> <p>13 analyses?</p> <p>14 Pardon?</p> <p>15 A. The answer is probably no. And the reason</p> <p>16 is that the analyses that you're referring to are</p> <p>17 essentially a note that the fact of finding a</p> <p>18 statistical significance would not even by itself be</p> <p>19 sufficient to establish manipulation. That is, what</p> <p>20 if you had somebody in Rhino's position with large</p> <p>21 holdings of a relatively liquid stock and they were</p> <p>22 simply wanting -- assume for the moment, I'll even</p> <p>23 use a different name.</p> <p>24 Let's say the company ABC had large</p> <p>25 holdings in Sedona and unwound those holdings over a</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 period of time. It would stand to reason that if</p> <p>3 these sales were significant, they may well have an</p> <p>4 impact on the stock price, even though that entity</p> <p>5 may not have been engaged in any manipulative</p> <p>6 strategy. So, you may have a situation where you can</p> <p>7 establish a relationship, a statistically significant</p> <p>8 relationship between one's trading and the underlying</p> <p>9 stock price, and that may not be sufficient to</p> <p>10 establish manipulation.</p> <p>11 Q. So what you're saying is you're only</p> <p>12 advocating a follow-up analysis if the correlation</p> <p>13 is -- is significant?</p> <p>14 A. This is typically the way you would view</p> <p>15 statistical analyses. The finding of statistical</p> <p>16 significance has to go through essentially a reality</p> <p>17 check whether the finding is meaningful in economic</p> <p>18 terms --</p> <p>19 Q. But also if you have a finding of low</p> <p>20 correlation or statistical significance, a follow-up</p> <p>21 analysis isn't important to do?</p> <p>22 A. There was nothing in the data that led me</p> <p>23 down this path to indicate that there is something</p> <p>24 that I might want to follow up on.</p> <p>25 Q. So we can make it clear what you did and</p>	<p>1 T. Beloreshki - Direct</p> <p>2 understand is one of -- it is part of opposing</p> <p>3 expert's focus, has five trading days in it. And the</p> <p>4 stock price declines, I believe, over the first four</p> <p>5 days rather significantly, probably to the tune of 30</p> <p>6 or so percent. And on the fifth day, the stock price</p> <p>7 increases by 33 percent. So while this is not a</p> <p>8 statistical analysis, this is an economic analysis,</p> <p>9 and it is informed by my experience as a trader.</p> <p>10 If you have a look back option and at the</p> <p>11 end of Day 5 the stock price is decreased by only</p> <p>12 6 percent or so, which is probably within the average</p> <p>13 drift of that stock, then clearly your -- if your</p> <p>14 intention was to manipulate that stock was not</p> <p>15 terribly successful and you may decide not to</p> <p>16 exercise your conversion option and try your</p> <p>17 manipulation again. And the other thing that would</p> <p>18 come out from just looking at the stock price history</p> <p>19 is about a -- the possibility of a manipulator</p> <p>20 allowing on Day 5 of a presumed manipulation</p> <p>21 period --</p> <p>22 Q. I'm sorry, but I'm not asking you about</p> <p>23 possibilities. I'm asking you about what you did</p> <p>24 here.</p> <p>25 A. Sir --</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 didn't do I'll ask you some questions.</p> <p>3 You said that careful consideration should</p> <p>4 be given to follow-up analysis of, one, changes in</p> <p>5 the trading pattern.</p> <p>6 A. Where are you talking?</p> <p>7 Q. On Page 19.</p> <p>8 A. 19. Yes.</p> <p>9 Q. Okay. Order placement strategies.</p> <p>10 A. Yes.</p> <p>11 Q. Nature rationale and timing of sales and</p> <p>12 conversions.</p> <p>13 A. Yes.</p> <p>14 Q. Okay? Did you do any of those?</p> <p>15 A. Yes.</p> <p>16 Q. When did you do -- Where are they</p> <p>17 reflected in your report?</p> <p>18 A. They're reflected in the conclusions and</p> <p>19 the analyses of the report.</p> <p>20 Q. Where in the data backing up to the</p> <p>21 report?</p> <p>22 A. Where in the data backing up the report?</p> <p>23 Let me give you a sense of what I have in mind as an</p> <p>24 example.</p> <p>25 The March conversion period, which I</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. As part of your answer, you said you were</p> <p>3 looking at certain transactions and you used an</p> <p>4 example the fifth day, the 26th. Correct?</p> <p>5 A. Sir, you're interrupting my train of</p> <p>6 thought.</p> <p>7 Q. I understand. Your train of thought is</p> <p>8 talking speculatively.</p> <p>9 A. No, that was not a speculative answer.</p> <p>10 Q. I'm asking you what you did?</p> <p>11 A. That was not a speculative answer. This</p> <p>12 was an answer based on what I did based on the data</p> <p>13 available.</p> <p>14 Q. So what did you do to determine the</p> <p>15 changes in trading patterns? That's all I'm asking</p> <p>16 you.</p> <p>17 A. That was not your question.</p> <p>18 Q. I'm not asking you your conclusions. I'm</p> <p>19 asking you what you did to examine the changes in</p> <p>20 trading patterns.</p> <p>21 A. The trading patterns, for example, are</p> <p>22 shown in one of the exhibits to my report. Okay.</p> <p>23 I apologize. It was not part of the</p> <p>24 exhibit. It was part -- probably part of the</p> <p>25 presentation to the -- to the U.S. Attorney's Office,</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 where we looked at the trading patterns. And the</p> <p>3 trading pattern generally was to establish a short</p> <p>4 position followed by a conversion notice, and then</p> <p>5 establishing another short position followed by</p> <p>6 conversion notice. So, we did --</p> <p>7 Q. Take a look at Exhibit Number 3.</p> <p>8 A. Okay. I don't see it here either.</p> <p>9 Q. It's not there, is it?</p> <p>10 A. No.</p> <p>11 Q. Let's use your example which you just</p> <p>12 gave, and I can tell you what the dates are. The</p> <p>13 26th is the date where you said the price went up 33</p> <p>14 percent.</p> <p>15 A. I believe you are correct.</p> <p>16 Q. I believe that was the last day of the</p> <p>17 first conversion period?</p> <p>18 A. Yes.</p> <p>19 Q. Did you ever look to determine why that</p> <p>20 happened?</p> <p>21 A. I do not know why that happened.</p> <p>22 Q. Did you ever listen to an audiotape that</p> <p>23 indicated why it happened?</p> <p>24 A. No.</p> <p>25 Q. Did Ms. Schechtman or anyone from Piper</p>	<p>1 T. Beloreshki - Direct</p> <p>2 THE VIDEOGRAPHER: The time is 4:10.</p> <p>3 We're going off the record. This marks the end of</p> <p>4 Tape Number 4.</p> <p>5 (Whereupon, a recess is taken.)</p> <p>6 THE VIDEOGRAPHER: The time is 4:23.</p> <p>7 We're back on the record. This is Tape Number 5.</p> <p>8 Q. Did you make an attempt to see whether or</p> <p>9 not there were any washed trades in the Sedona during</p> <p>10 the period of time that you were analyzing or doing</p> <p>11 your regression analysis?</p> <p>12 A. Those were not part of our analysis.</p> <p>13 Q. So you didn't do that?</p> <p>14 A. Correct.</p> <p>15 Q. Did you see any washed trades in the data</p> <p>16 that you looked at?</p> <p>17 A. Again, those were not the focus of the</p> <p>18 analysis.</p> <p>19 Q. I didn't ask you whether they were a</p> <p>20 focus. I asked you whether or not you saw any.</p> <p>21 A. No.</p> <p>22 Q. Now, the data that you did see, would you</p> <p>23 take a look at that. I think it's Exhibit Number 10,</p> <p>24 the original Exhibit Number 47, the spreadsheet.</p> <p>25 Remember I asked you about it, if you saw something</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 ever tell you on that day that Andreas Badian called</p> <p>3 up Danny Graham and said, I want to -- I want to</p> <p>4 now -- and I have been selling, I want to buy 20,000</p> <p>5 shares before 10 o'clock to push the price above a</p> <p>6 dollar? Did anyone ever tell you about that tape?</p> <p>7 MR. SOHN: Objection.</p> <p>8 A. No. I'm not aware of that. No.</p> <p>9 Q. Anyone ever tell you that Westminster on</p> <p>10 that day bought 30,000 shares starting in the morning</p> <p>11 to push it up, as well?</p> <p>12 A. I'm aware of the transactions on that</p> <p>13 date.</p> <p>14 Q. What do you mean, you're aware of the</p> <p>15 transactions on that date?</p> <p>16 A. I have the data on the transactions that</p> <p>17 were executed on that date.</p> <p>18 Q. You just know that the transactions</p> <p>19 occurred. You don't know why they occurred?</p> <p>20 A. Correct.</p> <p>21 Q. Do you know that some of those</p> <p>22 transactions were purchases above the offer?</p> <p>23 A. I'm a little lost. I thought we had an</p> <p>24 allegation of manipulating things down.</p> <p>25 Q. Well --</p>	<p>1 T. Beloreshki - Direct</p> <p>2 similar --</p> <p>3 MR. SOHN: Exhibit D to Exhibit --</p> <p>4 MR. GUIDO: No. The 21(a) report.</p> <p>5 MR. SOHN: Exhibit D.</p> <p>6 MR. GUIDO: Exhibit D to the 21(a) report.</p> <p>7 Thank you very much, gentlemen.</p> <p>8 Q. Look at Exhibit Number D.</p> <p>9 A. Yes.</p> <p>10 Q. Take a look at April 12th?</p> <p>11 A. Which year?</p> <p>12 Q. In Exhibit D.</p> <p>13 A. 2001?</p> <p>14 Q. 2001. Do you have it, April 12, 2001?</p> <p>15 A. Yes.</p> <p>16 Q. Do you see the entry for Refco?</p> <p>17 A. Would you refer me to a page that you're</p> <p>18 referring to?</p> <p>19 Q. I don't have a copy of the exhibit.</p> <p>20 A. I'll find it.</p> <p>21 Q. 22919?</p> <p>22 A. Okay. I'm on that page.</p> <p>23 Q. Do you see the entry for Refco, the buys.</p> <p>24 I think it's 225,000 shares?</p> <p>25 A. I can't see the number, but something of</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 that nature, yes.</p> <p>3 Q. And do you have an entry for Westminster?</p> <p>4 A. I do see that page.</p> <p>5 Q. 22925?</p> <p>6 A. Yes.</p> <p>7 Q. Do you see a sale from Westminster to</p> <p>8 Amro?</p> <p>9 MR. SOHN: Which day are we talking about</p> <p>10 again?</p> <p>11 MR. GUIDO: April 12th.</p> <p>12 A. Yes, I do see a sale.</p> <p>13 Q. Do you see that those trades offset each</p> <p>14 other?</p> <p>15 A. I can't quite make out the numbers, but it</p> <p>16 appears to be that the share numbers are the same,</p> <p>17 but the value of those shares or the transaction</p> <p>18 price is different.</p> <p>19 Q. There are transaction costs, aren't there,</p> <p>20 in any transaction?</p> <p>21 A. On a general -- generally speaking, yes.</p> <p>22 Q. But the figures are fairly close together?</p> <p>23 MR. SOHN: Objection.</p> <p>24 A. I don't know. One of the numbers I see is</p> <p>25 233,000. The other one I see is 285,000. And,</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. Now, look at your expert report, the</p> <p>3 Paragraph 62.</p> <p>4 A. Yes.</p> <p>5 Q. You got that?</p> <p>6 A. Yes.</p> <p>7 Q. Now, you're talking about manipulative</p> <p>8 strategy aimed at artificially depressing the price</p> <p>9 of Sedona shares. Did you make an effort to</p> <p>10 determine whether or not there was a manipulative</p> <p>11 strategy aimed at artificially increasing the price</p> <p>12 of Sedona shares?</p> <p>13 A. Some of our analyses, statistical</p> <p>14 analyses, would be responsive to that question. They</p> <p>15 may identify relation between Rhino transactions and</p> <p>16 stock price increases.</p> <p>17 Q. But you didn't express an opinion on that,</p> <p>18 did you? You only addressed suppressing the shares</p> <p>19 not increasing -- artificially increasing the price?</p> <p>20 A. Correct. I would just note that none of</p> <p>21 the statistical analyses that we had performed were</p> <p>22 indicative of -- of manipulation on the outside.</p> <p>23 Q. Is one of the risks in a market</p> <p>24 manipulation that you may not be able to sell the</p> <p>25 stock that you acquire in the manipulation at a high</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 again, I may be incorrect on that.</p> <p>3 Q. But there are shares purchased in the</p> <p>4 Refco account in the mid to 200,000 range?</p> <p>5 A. Yes.</p> <p>6 Q. And there's sales from the Westminster</p> <p>7 account somewhere in the mid 2,000 share range?</p> <p>8 A. Yes.</p> <p>9 Q. Did you look to see whether or not those</p> <p>10 were washed trades?</p> <p>11 A. No.</p> <p>12 Q. Did anyone ever tell you that there were</p> <p>13 wash trades on that date between Amro Westminster and</p> <p>14 Amro Refco?</p> <p>15 A. I don't know if I had been told about</p> <p>16 washed sales.</p> <p>17 Q. Pardon?</p> <p>18 A. I don't know if we had been told about</p> <p>19 wash sales prior to issuance of the report.</p> <p>20 Q. Prior to the Glosten report?</p> <p>21 A. Correct.</p> <p>22 Q. You just don't recall or you don't think</p> <p>23 it --</p> <p>24 A. I just don't recall. I don't want to mix</p> <p>25 it with a different case.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 enough price to make it profitable?</p> <p>3 MR. SOHN: Objection.</p> <p>4 A. That would be a risk generally associated</p> <p>5 with trading.</p> <p>6 Q. That is a risk in market manipulation</p> <p>7 particularly, isn't it?</p> <p>8 A. I don't know why in particular.</p> <p>9 Q. It is a risk in market manipulation?</p> <p>10 A. To the extent you may be holding shares</p> <p>11 and those may decline in value, yes, it is a risk.</p> <p>12 Q. Well, I mean, didn't you opine in the</p> <p>13 article if one of the disincentives to engage in</p> <p>14 market manipulation is that you may push it down and</p> <p>15 get the price at a lower price, but it may bounce up</p> <p>16 in a way that hurts you after the manipulation?</p> <p>17 A. You may be conflating at least two</p> <p>18 concepts from that piece. One is that it may not be</p> <p>19 advantageous for a manipulator to push the price low</p> <p>20 enough as to precipitate financial distress for the</p> <p>21 company. And the other concept is that if a</p> <p>22 manipulation strategy is executed via short selling,</p> <p>23 the profit of that strategy may suffer should the</p> <p>24 stock price rebound for whatever reason.</p> <p>25 Q. Well, is it in the interest of a</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 hypothetical manipulator who has a convertible</p> <p>3 debenture, who has pushed the price down to</p> <p>4 converting at a lower price and therefore get more</p> <p>5 shares also in that manipulator's interest to you</p> <p>6 interest to push the price back up to increase the</p> <p>7 profit on those converted shares?</p> <p>8 MR. SOHN: Objection to form.</p> <p>9 A. I mean, generally speaking, if you have a</p> <p>10 short position, you'll benefit from a decline in the</p> <p>11 stock price; and if you have a long position, you'll</p> <p>12 benefit from an increase in the stock price.</p> <p>13 Q. Is that your answer?</p> <p>14 A. Yes.</p> <p>15 Q. So, is your answer that there's -- that a</p> <p>16 manipulator who converts at a lower price has no</p> <p>17 interest in pushing the price up?</p> <p>18 A. That's not what I said.</p> <p>19 Q. Okay. Well, my answer -- my question is,</p> <p>20 does he have an interest in pushing the price up to</p> <p>21 sell it at a higher price?</p> <p>22 MR. SOHN: Objection.</p> <p>23 A. Assuming one has a long position, other</p> <p>24 things equal, yes.</p> <p>25 MR. GUIDO: I would like to have marked as</p>	<p>1 T. Beloreshki - Direct</p> <p>2 the volume?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And who the brokerage firms were on each</p> <p>5 side of the trade?</p> <p>6 A. I believe so.</p> <p>7 Q. Why did you look at it when you were doing</p> <p>8 the Pet Quarters analysis?</p> <p>9 A. Why did I look at it?</p> <p>10 Q. Yes.</p> <p>11 A. This was in response to opposing experts</p> <p>12 analyzing these data and doing inappropriate</p> <p>13 analysis -- analysis that were not proper.</p> <p>14 Q. This is not the rebuttal expert report.</p> <p>15 This is the expert report.</p> <p>16 A. Is it?</p> <p>17 Q. There was no other expert report at this</p> <p>18 time.</p> <p>19 A. Yes. So there was a previous report.</p> <p>20 Q. Okay. What page?</p> <p>21 A. On the same page, Paragraph 57. As you</p> <p>22 can see, in the later part of that paragraph it says.</p> <p>23 Q. What paragraph is this?</p> <p>24 A. The same paragraph, 57.</p> <p>25 Q. Hmm?</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 exhibit next number the expert report that you issued</p> <p>3 in Pet Quarters.</p> <p>4 (Whereupon, Exhibit Prowse Beloreshki-11</p> <p>5 is marked for identification by the reporter.)</p> <p>6 Q. Do you have Exhibit 11 in front of you?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Did you -- I want to direct your attention</p> <p>9 to Page 19. See Paragraph 57 talks about the NASDAQ</p> <p>10 Equity Trade Journal?</p> <p>11 A. Yes.</p> <p>12 Q. What is the NASDAQ Equity Trade Journal?</p> <p>13 A. I do see that.</p> <p>14 Q. Pardon?</p> <p>15 A. I do see the reference to NASDAQ Equity</p> <p>16 Trade Journal.</p> <p>17 Q. What is it?</p> <p>18 A. It was effectively a database that had</p> <p>19 transactions in it.</p> <p>20 Q. Was it like the audit trail report?</p> <p>21 A. Similar.</p> <p>22 Q. It contains similar data, doesn't it?</p> <p>23 A. Yes.</p> <p>24 Q. It includes the time the trades were</p> <p>25 executed, the times they were reported, the price and</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. 57.</p> <p>3 "We implemented the following procedure</p> <p>4 described by Claimant's expert, Dr. Shapiro, in a</p> <p>5 previous matter with similar allegations."</p> <p>6 Q. Okay. So, what you did is you saw that</p> <p>7 Dr. Shapiro in a previous matter did this. You're</p> <p>8 not responding to a previous report in Pet Quarters,</p> <p>9 are you?</p> <p>10 A. My recollection was incomplete on that,</p> <p>11 yes.</p> <p>12 Q. Where did you get the NASDAQ Equity Trade</p> <p>13 Journal?</p> <p>14 A. I don't know.</p> <p>15 Q. You don't know?</p> <p>16 A. I don't know.</p> <p>17 Q. Did you get it from Dr. Shapiro?</p> <p>18 A. Unlikely.</p> <p>19 Q. Okay. Turn to the next page, Page 20</p> <p>20 paragraph 61?</p> <p>21 A. Yes.</p> <p>22 Q. It says we conducted a regression</p> <p>23 analysis. Do you see the next paragraph you define</p> <p>24 it. You say: A regression analysis is a statistical</p> <p>25 tool that estimates the relationship between one</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 variable, the dependent variable, and another</p> <p>3 variable, the independent variable, by controlling</p> <p>4 for the effect of other variables that might also</p> <p>5 affect, A-F-F-E-C, the dependent variable.</p> <p>6 How are you using the term "affect" there?</p> <p>7 A. As in have an effect on.</p> <p>8 Q. Well, are you using it in terms of</p> <p>9 statistically significant?</p> <p>10 A. That is the context.</p> <p>11 Q. Okay. Now, on -- I want to direct your</p> <p>12 attention to Page 23. Look at footnote 21.</p> <p>13 A. Yes.</p> <p>14 Q. See where it says: The regression</p> <p>15 coefficients to the relationship between Pet</p> <p>16 Quarters' stock price and the NASDAQ Composite index</p> <p>17 range from between .3 and .31 are not statistically</p> <p>18 significant at the 95 percent confidence level, the</p> <p>19 level most commonly used by statisticians, but the</p> <p>20 regression coefficients for the relationship between</p> <p>21 Pet Quarters' stock price and the NASDAQ Composite</p> <p>22 index are statistically significant at the 95</p> <p>23 confidence level, the level occasionally used by</p> <p>24 economists and statisticians. No confidence levels</p> <p>25 below 90 percent are generally accepted for use by</p>	<p>1 T. Beloreshki - Direct</p> <p>2 this is the reason why there is the statement weak</p> <p>3 relationship in Paragraph 71.</p> <p>4 Q. But you did use the 90 percent impact to</p> <p>5 reach a conclusion in Paragraph 71?</p> <p>6 A. We used it, and we properly noted that</p> <p>7 that relationship was weak.</p> <p>8 Q. Okay. But you used it? I'm just asking a</p> <p>9 simple question, did you or did you not rely upon it</p> <p>10 for the Paragraph 71? It's a simple yes-or-no</p> <p>11 answer.</p> <p>12 A. Yes.</p> <p>13 Q. Yes?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Now, let's go to Paragraph 32. I</p> <p>16 want to direct your attention to Paragraph 105.</p> <p>17 MR. SOHN: Page 32?</p> <p>18 MR. GUIDO: Page 32, Paragraph 105.</p> <p>19 Q. This says: Respondents executed a number</p> <p>20 of large inter-account transfers off-market without</p> <p>21 having those transfers affect reported market</p> <p>22 volumes. This fact belies the idea of Respondents'</p> <p>23 attempt to create a misleading picture of liquidity</p> <p>24 in the marketplace for Pet Quarters common stock.</p> <p>25 Do you see that?</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 economists and statisticians.</p> <p>3 Is that your position?</p> <p>4 A. Yes.</p> <p>5 Q. And did you use a 90 percent confidence</p> <p>6 level in your regression analysis in Pet Quarters?</p> <p>7 A. I don't recall. Generally we -- the one</p> <p>8 that carries weight with me is 95 or 99.</p> <p>9 Q. Pardon? Take a look at Paragraph 71?</p> <p>10 A. I'm sorry?</p> <p>11 Q. Take a look at Paragraph 71, the Pet</p> <p>12 Quarters report.</p> <p>13 A. Yes.</p> <p>14 Q. It says: While the regression analysis</p> <p>15 are indicative of a, quote, weak, unquote,</p> <p>16 relationship between the performance of Pet Quarters</p> <p>17 stock and the performance of NASDAQ in terms of</p> <p>18 day-to-day stock price movements, they do not</p> <p>19 demonstrate that Respondents' transactions in Pet</p> <p>20 Quarters' common stock had any impact on Pet Quarters</p> <p>21 stock price.</p> <p>22 Does that refresh your recollection that</p> <p>23 you use the 90 percent percentage in your analysis?</p> <p>24 A. As was reported in -- as we just cited</p> <p>25 about. There was a discussion footnote about 90, and</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. I do.</p> <p>3 Q. If the Respondents had executed a large</p> <p>4 number of inter-account transfers on market having</p> <p>5 those transfers reported into the market, would that</p> <p>6 indicate an intent to create a misleading picture of</p> <p>7 liquidity in the marketplace for the stock?</p> <p>8 MR. SOHN: In this case?</p> <p>9 MR. GUIDO: Yeah.</p> <p>10 Q. If the opposite had occurred?</p> <p>11 A. It may be something that one might look</p> <p>12 into. It's not sufficient to jump to a conclusion,</p> <p>13 but it may be something that one might look at.</p> <p>14 Q. But it could indicate an intent to create</p> <p>15 a misleading picture?</p> <p>16 A. Potentially.</p> <p>17 Q. Okay.</p> <p>18 A. It has to be looked into.</p> <p>19 Q. Now, then on Page 41, there's a discussion</p> <p>20 at the bottom of the page about a thing called an</p> <p>21 Altman's Z-score?</p> <p>22 A. Yes.</p> <p>23 Q. It's a generally accepted method by</p> <p>24 financial analysts, academics and others to predict</p> <p>25 the likelihood of business failure leading to</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 bankruptcy?</p> <p>3 A. Yes.</p> <p>4 Q. Did you perform an Altman's Z-score on</p> <p>5 Sedona?</p> <p>6 A. I don't recall doing that.</p> <p>7 Q. You don't recall or you didn't do it?</p> <p>8 A. I don't believe I had done that.</p> <p>9 Q. Why not? Why not?</p> <p>10 A. Oh. Why not. That was the question?</p> <p>11 Q. Yes.</p> <p>12 A. I don't have a recollection of -- you</p> <p>13 know, of making a decision one way or the other to</p> <p>14 include it or not to include it. I just note these</p> <p>15 are different cases.</p> <p>16 Q. But both of them involved allegations of</p> <p>17 market manipulation?</p> <p>18 A. That is correct, but at least I don't</p> <p>19 treat them as cookie cutters.</p> <p>20 Q. Pardon?</p> <p>21 A. At least I don't treat them as cookie</p> <p>22 cutting.</p> <p>23 Q. Now, I would like you to take a look at</p> <p>24 Exhibit Number 12.</p> <p>25 Do you recall that you prepared a rebuttal</p>	<p>1 T. Beloreshki - Direct</p> <p>2 that.</p> <p>3 Q. Now, did you -- You identified a number of</p> <p>4 peer group companies that you referred to in one of</p> <p>5 your exhibits in this -- in this case. And you have</p> <p>6 their performance, and you -- it's in Exhibit 5A in</p> <p>7 your report.</p> <p>8 A. Yes.</p> <p>9 Q. Now, when you selected those peer groups,</p> <p>10 because you didn't use -- I think you only used 59 of</p> <p>11 121 that were in a peer group identified by</p> <p>12 Bloomberg?</p> <p>13 A. Correct. So they were not selected by me.</p> <p>14 Q. Who selected them?</p> <p>15 A. Bloomberg.</p> <p>16 Q. 121 were selected by Bloomberg?</p> <p>17 A. Correct.</p> <p>18 Q. Why did you only come up with 59?</p> <p>19 A. As the footnote says, that was due to data</p> <p>20 limitations.</p> <p>21 Q. With regard to those peer group companies,</p> <p>22 did you go take a look at the specifics of those</p> <p>23 companies, their fundamentals?</p> <p>24 A. No. I relied on the Bloomberg analytics</p> <p>25 to identify these companies.</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 expert report in Pet Quarters?</p> <p>3 (Whereupon, Exhibit Prowse Beloreshki-12</p> <p>4 is marked for identification by the reporter.)</p> <p>5 Q. Have you had an opportunity to review</p> <p>6 Exhibit Number 12?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall preparing this report?</p> <p>9 A. Yes.</p> <p>10 Q. Pardon?</p> <p>11 A. Yes.</p> <p>12 Q. Now, on Page 8, I may have asked you this</p> <p>13 question once before, but I'll repeat it. You talk</p> <p>14 about a thing called a firm's beta coefficient in</p> <p>15 Paragraph 16 on Page 8.</p> <p>16 See that paragraph?</p> <p>17 A. Yes.</p> <p>18 Q. It talks about a capital asset pricing</p> <p>19 model. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Did you perform that on Sedona?</p> <p>22 A. If the question is whether we performed a</p> <p>23 regression that had solely Sedona price, Sedona</p> <p>24 returns as a dependent variable and say a NASDAQ as</p> <p>25 the independent variable, I don't believe we did</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. Well, what do the Bloomberg analytics do</p> <p>3 when they define a peer group?</p> <p>4 A. I don't know the analytics behind it.</p> <p>5 Q. Well, one of your backups refers to an</p> <p>6 industry group as the peer group. Was the Bloomberg</p> <p>7 peer group analysis just merely an identification of</p> <p>8 an industry group in this case being software</p> <p>9 vendors?</p> <p>10 A. Again, I don't know the analytics that go</p> <p>11 behind Bloomberg's determination of peer group</p> <p>12 companies.</p> <p>13 Q. So you just accepted whatever they said</p> <p>14 were peer group companies, and you just applied it</p> <p>15 here without determining for yourself whether or not</p> <p>16 there were actual peer --</p> <p>17 A. Correct. I tend to like Bloomberg.</p> <p>18 Q. Okay. You tend to like Bloomberg. Now,</p> <p>19 did you look at the companies in terms of their</p> <p>20 market capitalization?</p> <p>21 A. The companies where?</p> <p>22 Q. The peer group companies. And compared</p> <p>23 them to Sedona?</p> <p>24 A. No.</p> <p>25 Q. Did you look at them in terms of the</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 liquidity of their stock?</p> <p>3 A. No. As I said, I used the Bloomberg data.</p> <p>4 Q. Did you look at them in terms of their net</p> <p>5 return?</p> <p>6 A. I believe the net returns are part of</p> <p>7 this -- this chart.</p> <p>8 Q. Did you look at them in terms of their --</p> <p>9 what I meant by net returns is their profit, their</p> <p>10 net profit. Excuse me. Not stock price.</p> <p>11 A. I wouldn't think so.</p> <p>12 Q. Did you look at them in terms of number of</p> <p>13 shareholders?</p> <p>14 A. No.</p> <p>15 Q. Did you look at them in terms of the</p> <p>16 number of shares outstanding?</p> <p>17 A. No.</p> <p>18 Q. Did you look at them in terms of number of</p> <p>19 shares registered?</p> <p>20 A. No.</p> <p>21 Q. Did you look at them in terms of price</p> <p>22 sales ratio?</p> <p>23 A. No.</p> <p>24 Q. Now, one of the things that you talked</p> <p>25 about is that during the time period that you</p>	<p>1 T. Beloreshki - Direct</p> <p>2 MR. SOHN: 2001?</p> <p>3 MR. GUIDO: 2001.</p> <p>4 Q. Is that correct or am I misreading this</p> <p>5 chart?</p> <p>6 A. I can't see the exact dates, but I'm</p> <p>7 inclined to agree with you.</p> <p>8 Q. So during that period of time that, at</p> <p>9 least my reading of the complaint about the market</p> <p>10 manipulation of the price, at least in one portion of</p> <p>11 it, is that the price increased it didn't decrease</p> <p>12 during this period of time?</p> <p>13 A. It's a little bit too general a statement.</p> <p>14 And I -- and, again, I don't see the exact date, so I</p> <p>15 would say that the way I look at the chart, the first</p> <p>16 part of 2001 both -- well, Sedona, NASDAQ, and the</p> <p>17 peer group were declining. And after that, there was</p> <p>18 a period when all the three were increasing. But</p> <p>19 that's an eyeball test.</p> <p>20 Q. No, I understand for the longer period of</p> <p>21 time. I'm asking you about the shorter period of</p> <p>22 time.</p> <p>23 A. I'll be happy to answer that question if I</p> <p>24 had the data in front of me.</p> <p>25 Q. But if I want know -- if I want to see the</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 analyzed the Sedona stock, it was a declining stock.</p> <p>3 The price was declining during this period of time.</p> <p>4 Do you recall that?</p> <p>5 A. During what period?</p> <p>6 Q. During the period of time that you</p> <p>7 analyzed it.</p> <p>8 A. Well, we have analyzed a number of time</p> <p>9 periods.</p> <p>10 Q. Well, look at Page 8 of your report.</p> <p>11 MR. SOHN: The report in this case?</p> <p>12 MR. GUIDO: The report in this case,</p> <p>13 Exhibit 4.</p> <p>14 A. Yes.</p> <p>15 Q. You say that the performance of the stock</p> <p>16 price over this period declined between March 1st and</p> <p>17 May 31st, 2001. And then in -- Take a look -- And</p> <p>18 then it directs your attention to Exhibit Number 5A?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Now, when I look at -- And maybe I'm</p> <p>21 misreading this -- this chart, but if I look at the</p> <p>22 red line which is Sedona price returns --</p> <p>23 A. Yes.</p> <p>24 Q. -- it looks like between March 1st and</p> <p>25 May 31st, that the stock price increased.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 specific data, one of the places I could look is the</p> <p>3 backup data that you produced for the SEC for this</p> <p>4 chart or graph?</p> <p>5 A. Correct.</p> <p>6 Q. But you agree with me that peers, based on</p> <p>7 this -- this -- this graph that the price increased</p> <p>8 between March of --</p> <p>9 A. No, I do not agree with that. I just</p> <p>10 don't know. I don't see the dates, so I -- I -- I</p> <p>11 just don't know.</p> <p>12 Q. I thought you just said it appeared to</p> <p>13 increase.</p> <p>14 A. No. You attached particular dates to my</p> <p>15 statement. My statement was that looking at the</p> <p>16 chart and not being certain about the dates, it would</p> <p>17 appear to me that Sedona, NASDAQ and the peer group</p> <p>18 companies declined in the first -- in some first</p> <p>19 portion of 2001, after which all the three of them</p> <p>20 increased, but I don't know the exact date ranges.</p> <p>21 Q. Okay. Let's take a look at Page 19 of</p> <p>22 your rebuttal report.</p> <p>23 A. Yes.</p> <p>24 Q. This is a response to the plaintiff's</p> <p>25 report that the -- the respondent, the client you</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 were testifying on behalf of, trades between the</p> <p>3 accounts injected false information into the market.</p> <p>4 And Paragraph 50 is -- includes the claim that the</p> <p>5 trades -- you're addressing a claim by the</p> <p>6 plaintiff's counsel that trades between respondents'</p> <p>7 accounts were perceived by market participants as</p> <p>8 selling pressure in the market, depressing the</p> <p>9 company's share price. And then you say that the</p> <p>10 plaintiff's report provides no evidence or basis of</p> <p>11 this claim, and then you add this statement. In</p> <p>12 basic finance -- "In fact, basic finance area</p> <p>13 suggests exactly the opposite conclusion."</p> <p>14 Why did you say that? What was the basis</p> <p>15 of that?</p> <p>16 A. I don't recall the context of -- of these</p> <p>17 analyses. It may be -- I don't know what the nature</p> <p>18 of these trades between respondents' accounts was.</p> <p>19 Q. Why don't you look at Paragraph 51. Maybe</p> <p>20 that will help refresh your memory of what your</p> <p>21 understanding of the market is.</p> <p>22 It says: "Second, the trade themselves,</p> <p>23 to the extent they suggest active trading in the</p> <p>24 marketplace, suggest greater liquidity which would</p> <p>25 tend to increase the value of Pet Quarters' stock."</p>	<p>1 T. Beloreshki - Direct</p> <p>2 market manipulation. Isn't that correct?</p> <p>3 A. I don't have a recollection of these</p> <p>4 analyses.</p> <p>5 Q. It talks about non-market transfers.</p> <p>6 Do you see that?</p> <p>7 A. Three transactions were non-market</p> <p>8 transfers. Yes, I do.</p> <p>9 Q. Okay. What's a non-market transfer?</p> <p>10 A. Transfers that were not reported to the</p> <p>11 marketplace.</p> <p>12 Q. And what kind of transfers would those be?</p> <p>13 A. I don't know what you mean.</p> <p>14 Q. Well, let me give you some examples. If I</p> <p>15 DTC shares from one account to another, is that a</p> <p>16 non-market transfer?</p> <p>17 A. I don't know the answer to that question.</p> <p>18 Q. Well, did non-market -- Can non-market</p> <p>19 transfers in any way have an effect on the price of</p> <p>20 the stock in the market?</p> <p>21 MR. SOHN: Ever?</p> <p>22 MR. GUIDO: Ever.</p> <p>23 A. They may.</p> <p>24 Q. In what situation?</p> <p>25 A. I don't know particular situations.</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 And then the last sentence of the paragraph says:</p> <p>3 Thus, this is another reason higher volume might be</p> <p>4 regarded by the market is good news for Pet Quarters.</p> <p>5 A. So --</p> <p>6 Q. So these are wash trades. Right?</p> <p>7 A. I don't know if they're wash trades. I</p> <p>8 don't remember that part.</p> <p>9 Q. Well, I mean, it says it's trades between</p> <p>10 respondents' accounts. Those are, by definition,</p> <p>11 wash trades, aren't they?</p> <p>12 A. They may be wash trades. I don't know if</p> <p>13 they are wash trades.</p> <p>14 Q. Okay. But wash trades have a tendency to</p> <p>15 interject false information about the liquidity in</p> <p>16 the market?</p> <p>17 A. Wash sales may create the impression of</p> <p>18 high liquidity and value -- there actually is.</p> <p>19 Q. I want to go to Page 20 and Paragraph 53.</p> <p>20 A. Yes.</p> <p>21 Q. Paragraph 53 says -- This is your analysis</p> <p>22 of the transactions that were included in the</p> <p>23 plaintiff's report, and you explain why in your view</p> <p>24 inter-account transactions were not appropriately</p> <p>25 included in the analysis to prove that there was</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. In fact, you don't know of any, do you?</p> <p>3 MR. SOHN: Mr. Guido, he wasn't finished</p> <p>4 with his answer.</p> <p>5 A. If such information becomes available to</p> <p>6 all market participants through some channel of</p> <p>7 information transfer other than the market tape,</p> <p>8 potentially yes.</p> <p>9 Q. Other than it becoming available for the</p> <p>10 other channels?</p> <p>11 A. Well, that was the one example I could</p> <p>12 think of.</p> <p>13 Q. All right. Well, let's speed this up.</p> <p>14 You included non-market transactions in</p> <p>15 your regression analysis?</p> <p>16 A. For some of the regression analysis,</p> <p>17 that's correct.</p> <p>18 Q. Why?</p> <p>19 A. For the reason I just explained. I did</p> <p>20 not know that these had no impact on the trading of</p> <p>21 Sedona.</p> <p>22 Q. And you didn't know whether they did have</p> <p>23 an impact either, did you?</p> <p>24 A. A priori, I did not know whether any of</p> <p>25 the materials that were determined were potentially</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 relevant would indeed be relevant.</p> <p>3 Q. Well, I mean you were -- you were</p> <p>4 attempting to determine whether or not the writer of</p> <p>5 transactions, the so-called writer of transactions</p> <p>6 had an impact on the Sedona market price, weren't</p> <p>7 you?</p> <p>8 A. Correct, which is why we looked at all</p> <p>9 types of Rhino transactions in an --</p> <p>10 Q. Why did you include transactions that were</p> <p>11 not reported to the market?</p> <p>12 A. For the reason I explained to you.</p> <p>13 Because I do not know that those necessarily would</p> <p>14 have no impact.</p> <p>15 Q. But you don't know whether they did have</p> <p>16 an impact either, did you?</p> <p>17 A. I didn't know whether any of the variables</p> <p>18 we used would have an impact, a priori, going into --</p> <p>19 Q. Well, you were measuring reported</p> <p>20 transactions, weren't you?</p> <p>21 A. I was using the data.</p> <p>22 Q. If you were trying to determine whether</p> <p>23 Sedona -- Rhino -- Rhino transactions had an impact</p> <p>24 on Sedona's stock price, one of the things you would</p> <p>25 naturally look to are reported transactions to the</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. Those were the complete transaction</p> <p>3 records. Without those we would not have been able</p> <p>4 to reconcile the accounts.</p> <p>5 Q. I understand. What were the complete</p> <p>6 transaction records that were provided to you?</p> <p>7 A. Those were all transactions as reflected</p> <p>8 in the account statements.</p> <p>9 Q. But I mean -- I'm sorry. I mean, but if I</p> <p>10 look at Exhibit Number 3, which is the material you</p> <p>11 say you considered --</p> <p>12 A. Yes.</p> <p>13 Q. -- I don't see account statements for</p> <p>14 Westminster, for example, at all. So, how can you</p> <p>15 say you looked at them, when here in your report that</p> <p>16 you signed you said you didn't review those.</p> <p>17 MR. SOHN: Objection.</p> <p>18 A. I know I looked at them, and I know my</p> <p>19 team at NERA looked at them because this is how we</p> <p>20 assemble the database.</p> <p>21 Q. Really? Then why didn't you conclude that</p> <p>22 information in Exhibit Number 3? It's not here.</p> <p>23 A. I -- again, I don't know what was subsumed</p> <p>24 on the trading data.</p> <p>25 Q. Well, you were issued a subpoena to</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 market. Right?</p> <p>3 A. That would be one thing to look at.</p> <p>4 Q. And the one thing that you would typically</p> <p>5 exclude would be transactions that are not reported</p> <p>6 to the market, unless you had reason otherwise to</p> <p>7 include them?</p> <p>8 A. As I said, a priori, I did not have a</p> <p>9 reason to include those.</p> <p>10 Q. Did Caryn Schechtman tell you to include</p> <p>11 desk transfers into you analysis?</p> <p>12 A. Caryn Schechtman has nothing to do with</p> <p>13 the specification of our analysis.</p> <p>14 Q. Well, wait a minute. You didn't talk to</p> <p>15 Caryn Schechtman about the data that you were</p> <p>16 including in your report?</p> <p>17 A. I said she didn't have inputs into the</p> <p>18 model specifications.</p> <p>19 Q. You didn't discuss with her what you</p> <p>20 included into the -- into the data that you analyzed?</p> <p>21 A. She would have seen outputs. She would</p> <p>22 have seen the results, but the model specification</p> <p>23 was determined by us.</p> <p>24 Q. Where did you get the information to put</p> <p>25 in your database other than from Caryn Schechtman?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 produce all documents that you relied upon?</p> <p>3 A. Yes.</p> <p>4 Q. And a court order to do that. Are you</p> <p>5 saying that that trading data that you produced to</p> <p>6 the SEC includes the Westminster account statements?</p> <p>7 I have those statements in my office.</p> <p>8 A. Okay.</p> <p>9 Q. Okay? My question for you is, are those</p> <p>10 statements in my office? The purported trade data</p> <p>11 which has the Bates stamps --</p> <p>12 A. Okay.</p> <p>13 Q. -- that are on your original</p> <p>14 unexpurgated Exhibit 3 are in my office.</p> <p>15 A. Okay.</p> <p>16 Q. Are you telling me today under oath that I</p> <p>17 have in my office the trading data in the Westminster</p> <p>18 account statements in that group?</p> <p>19 MR. SOHN: Objection to form.</p> <p>20 A. I don't know what you have in your office.</p> <p>21 Q. You don't know what I have in the office,</p> <p>22 and don't what you produced and you don't know what</p> <p>23 you looked at, do you?</p> <p>24 A. That -- Well, I don't know and I don't</p> <p>25 recall everything that I have looked at. That would</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 be a fair statement. It has been a number of years.</p> <p>3 Q. Isn't it true that either Caryn Schechtman</p> <p>4 or someone working with her provided you with an</p> <p>5 electronic database from which you prepared your</p> <p>6 report?</p> <p>7 A. No. I don't believe that's the case.</p> <p>8 Q. Did anyone from Rhino provide you with a</p> <p>9 database?</p> <p>10 A. The only electronic data that I had been</p> <p>11 provided was the one we discussed hours earlier which</p> <p>12 was years ago and was data that was used to</p> <p>13 essentially double-check the information in the</p> <p>14 account statements. But there was no electronic</p> <p>15 database or anything of that nature provided to me in</p> <p>16 the preparation of this report.</p> <p>17 Q. Well, let's turn to your report, the</p> <p>18 regressions in your report.</p> <p>19 MR. SOHN: Exhibit 4?</p> <p>20 MR. GUIDO: Exhibit 4.</p> <p>21 A. Yes, sir.</p> <p>22 Q. Now, the regressions in your report are on</p> <p>23 Exhibit 13A and B. Is that correct?</p> <p>24 A. Correct.</p> <p>25 Q. And these are the reports -- regressions</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. No. What includes transfers?</p> <p>3 Q. Any Rhino trading on a day. If there was</p> <p>4 just -- there was only a transfer -- any time, any</p> <p>5 day, did it get marked with a "1" for trading?</p> <p>6 A. I don't recall about these variable, but</p> <p>7 it's possible.</p> <p>8 Q. Okay. And if there was a deposit of a</p> <p>9 conversion, did it get marked as a 1?</p> <p>10 A. I don't recall the specifics of that.</p> <p>11 Q. So you don't know?</p> <p>12 A. I don't know.</p> <p>13 Q. Rhino purchases. Did you mark any</p> <p>14 transfers in as purchases?</p> <p>15 A. My inclination is to say no, but I'll have</p> <p>16 to double-check with the data.</p> <p>17 Q. What about Rhino sales?</p> <p>18 A. Same answer.</p> <p>19 Q. What about Rhino transfer? What's that</p> <p>20 refer to?</p> <p>21 A. Those are transfers into and out of</p> <p>22 accounts.</p> <p>23 Q. Okay. And did you attempt to determine</p> <p>24 how they were transferred in and out?</p> <p>25 A. No.</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 that you did, that you relied upon for your</p> <p>3 conclusions in your report. Correct?</p> <p>4 MR. SOHN: Objection.</p> <p>5 A. These are some of the regression analyses</p> <p>6 we performed.</p> <p>7 Q. Well, did you rely upon them for any of</p> <p>8 the conclusions in your report?</p> <p>9 A. We relied on all the regressions we</p> <p>10 performed.</p> <p>11 Q. Well, let's go through the -- the columns</p> <p>12 here in Exhibit 13A.</p> <p>13 A. Okay.</p> <p>14 Q. On one of them it says any Rhino trading.</p> <p>15 How was that -- How did you determine what any Rhino</p> <p>16 trading was.</p> <p>17 A. Again, this is an indicated variable that</p> <p>18 flags whether or not Rhino is present in the</p> <p>19 marketplace.</p> <p>20 Q. Whether they bought or sold or just a bar?</p> <p>21 A. Let it be bar.</p> <p>22 Q. And that it -- It also included -- a flag</p> <p>23 for any transfers into an account, did it not?</p> <p>24 A. What is it?</p> <p>25 Q. Transfers, any transfers.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. And then it says Rhino principal.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. What does that refer to?</p> <p>6 A. That -- that refers to -- like in</p> <p>7 conversion transactions and off shelf purchases.</p> <p>8 Q. And exercise of words?</p> <p>9 A. Yes.</p> <p>10 Q. And they're all transactions with Sedona.</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Have you ever -- I think you</p> <p>13 indicated you looked at the auto train reports for</p> <p>14 March and April?</p> <p>15 A. I looked through the file, yes.</p> <p>16 Q. Did you see any reporting of transfers of</p> <p>17 principals increasing those auto train reports?</p> <p>18 A. No.</p> <p>19 Q. Now, the next says net daily shares</p> <p>20 transacted as a percentage of the total reported</p> <p>21 trading volume.</p> <p>22 A. Yes.</p> <p>23 Q. What's the reported trading volume</p> <p>24 referred to there?</p> <p>25 A. That is the trading volume as obtained</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 from probably Bloomberg.</p> <p>3 Q. Okay. Now, then there's a note. It says</p> <p>4 denote significance at 5 percent with one asterisk,</p> <p>5 and two denotes significance at 1 percent level. Do</p> <p>6 you see where it says NASDAQ return?</p> <p>7 A. Yes.</p> <p>8 Q. And it has the asterisk?</p> <p>9 A. Yes.</p> <p>10 Q. Does that mean that -- that the</p> <p>11 relationship between NASDAQ and Sedona's price during</p> <p>12 this time period, June 26, 2000, through June 14,</p> <p>13 2002, were related to each other in a significant way</p> <p>14 at the 1 percent level?</p> <p>15 MR. SOHN: Object to form.</p> <p>16 A. I don't know.</p> <p>17 Q. Well, let me ask you: You're the one who</p> <p>18 put the asterisk next to NASDAQ returns. What's it</p> <p>19 mean?</p> <p>20 A. I just don't recall, or I don't know</p> <p>21 whether the asterisks were put --</p> <p>22 Q. Pardon?</p> <p>23 A. I don't recall whether the asterisks were</p> <p>24 put on the basis of individual regressions or a</p> <p>25 family of tests.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. Well, was the original Exhibit 13B</p> <p>3 prepared when you were at NERA?</p> <p>4 A. No.</p> <p>5 Q. No?</p> <p>6 A. The original 13B -- I don't know what is</p> <p>7 the original 13B.</p> <p>8 Q. Pardon?</p> <p>9 MR. SOHN: You mean the one attached to</p> <p>10 the report?</p> <p>11 MR. GUIDO: No.</p> <p>12 Q. This Exhibit Number 13. Was the original</p> <p>13 of this spreadsheet -- this is a copy of an</p> <p>14 electronic spreadsheet on Excel. Was this prepared</p> <p>15 when you were first at NERA?</p> <p>16 A. I don't know whether this particular thing</p> <p>17 was prepared first at NERA. What did happen was that</p> <p>18 I provided Erica with an Excel spreadsheet that was</p> <p>19 coming from my NERA days with various statistical and</p> <p>20 econometric analysis, and she used that as the basis</p> <p>21 for her work.</p> <p>22 Q. That's to prepare Exhibit 13?</p> <p>23 A. And other exhibits, possibly.</p> <p>24 Q. Okay. Now, the -- behind that in BP 4 is</p> <p>25 a spreadsheet that has various calculations and I</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 MR. GUIDO: I would like to have marked as</p> <p>3 exhibit next number a document that we pulled off of</p> <p>4 a production, an electronic production that was made</p> <p>5 to us, and it's in a spreadsheet that is BP, and a</p> <p>6 number of zeroes, 4.XLS.</p> <p>7 We have put in a label on this sheet that</p> <p>8 doesn't have all the numbers -- all the zeroes, but</p> <p>9 we refer to it as BP 4. And the tab under which it</p> <p>10 exists is -- the tab is marked Exhibit 13B.</p> <p>11 In fact, let me give the original to the</p> <p>12 court reporter, and I'll get that document.</p> <p>13 (Whereupon, Exhibit Prowse Beloreshki-13B</p> <p>14 is marked for identification by the reporter.)</p> <p>15 Q. Did you prepare Exhibit 13B?</p> <p>16 A. No.</p> <p>17 Q. Who did?</p> <p>18 A. That would have been Erica Rose.</p> <p>19 Q. Pardon?</p> <p>20 A. Erica Rose.</p> <p>21 Q. Erica Rose. Who's Erica Rose?</p> <p>22 A. An associate of mine who works with me and</p> <p>23 Dr. Prowse on a number of occasions.</p> <p>24 Q. Okay. When was this prepared?</p> <p>25 A. I don't know.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 would like to have that marked as Exhibit 14.</p> <p>3 (Whereupon, Exhibit Prowse Beloreshki-14</p> <p>4 is marked for identification by the reporter.)</p> <p>5 MR. SOHN: Do you want -- it looks like</p> <p>6 there's a bunch of them --</p> <p>7 MR. GUIDO: Keep the blue pages in. I'll</p> <p>8 explain why.</p> <p>9 Q. Now, the reason the blue pages are in</p> <p>10 there is that this document, when it was printed --</p> <p>11 you probably have looked at this before, but this is</p> <p>12 a very wide spreadsheet, and it goes from A to --</p> <p>13 Column A to Column AX and then from BA to BF, so it</p> <p>14 has a series of regressions. I want to see if we can</p> <p>15 match these up with the one-page summary which has</p> <p>16 been marked as Exhibit Number 13. You can help us do</p> <p>17 that.</p> <p>18 Now, if you look at the first page of</p> <p>19 Exhibit Number 14, it says Regression Number 1. Do</p> <p>20 you see that? It says Column AC and AD.</p> <p>21 A. I do.</p> <p>22 Q. Now, does that correspond to the</p> <p>23 Regression 1 for any Rhino trading on Exhibit 13?</p> <p>24 A. I don't know.</p> <p>25 Q. You don't know. You can't tell.</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 A. It's not the usual way I look at an Excel</p> <p>3 spreadsheet.</p> <p>4 Q. Does it -- take a look at Columns AE</p> <p>5 through AG and look at the P value for Regression</p> <p>6 Number 1 in Exhibit 13 and compare it to Exhibit 14,</p> <p>7 Column AE through AG. Are Columns AE through AG</p> <p>8 reflective of Regression Number 1, which is all Rhino</p> <p>9 trading? And then to speed --</p> <p>10 A. It would appear that way.</p> <p>11 Q. When you compare the P values on 13 it's</p> <p>12 463942, and on 14 it's 4639. Right?</p> <p>13 A. Yes.</p> <p>14 Q. That would indicate that there's -- now</p> <p>15 take a look at Regression Number 2. That is the --</p> <p>16 and that is A1 through AI. Look at the Regression</p> <p>17 35.</p> <p>18 A. Yes. I see that.</p> <p>19 Q. What did it conform to?</p> <p>20 A. That would be -- I'm comparing the</p> <p>21 P values, because I see them on that page with the</p> <p>22 P values on Regression 2 of Exhibit 13 and they</p> <p>23 appear to be the same.</p> <p>24 Q. In Column AJ. Right? And then you look</p> <p>25 at the regressions for Rhino sales, which is</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. I do see that.</p> <p>3 Q. Now, then we get to the net daily shares</p> <p>4 -- net daily shares transacted as a percentage of</p> <p>5 total reported trading volume. Okay? You see that.</p> <p>6 In what column does that -- it seems like it would be</p> <p>7 AT, but the numbers don't match, do they?</p> <p>8 A. I don't know what your question is.</p> <p>9 Q. Well, the question is: If you take, on</p> <p>10 Exhibit 13, for Regression Number 4 is net daily</p> <p>11 shares transacted as a percentage of the total</p> <p>12 reported trading volume --</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. What column in Exhibit 14 would correspond</p> <p>16 to that column on Exhibit 13?</p> <p>17 MR. SOHN: Objection.</p> <p>18 A. I don't know.</p> <p>19 Q. They both have the same heading, don't</p> <p>20 they?</p> <p>21 A. They do have the same heading.</p> <p>22 Q. Except one is 417 and the other is 74.46,</p> <p>23 so it can't be AT. Right?</p> <p>24 A. I don't know.</p> <p>25 Q. Let's go to the next. Take a look at AW,</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 Regression Number 2, and under Rhino sales you hit</p> <p>3 34.6 --</p> <p>4 A. I see that.</p> <p>5 Q. The column on Exhibit 13 that says Rhino</p> <p>6 sales would conform to the Row AK on Exhibit 14.</p> <p>7 A. It appears that way, yes.</p> <p>8 Q. Okay. And in the -- in the Rhino</p> <p>9 transfer, you have to go to the next column, which is</p> <p>10 on -- following the next -- the first blue sheet,</p> <p>11 which would conform to the AP --</p> <p>12 MR. SOHN: When you say conform, you mean</p> <p>13 have the same number?</p> <p>14 MR. GUIDO: Pardon?</p> <p>15 MR. SOHN: When you say conform, you mean</p> <p>16 have the same number?</p> <p>17 MR. GUIDO: Yes. I'm trying to figure out</p> <p>18 where the numbers are derived from.</p> <p>19 Q. AP, which has the 88.7839, which conforms</p> <p>20 to the 88.78 on Exhibit 13 for Regression 3?</p> <p>21 A. I do see that.</p> <p>22 Q. Hmm?</p> <p>23 A. I do see that.</p> <p>24 Q. And then the Rhino principal flag is 41.63</p> <p>25 in AQ, and that conforms to the Rhino principal?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 net trading as a percentage of volume.</p> <p>3 Do you see that one?</p> <p>4 A. Yes.</p> <p>5 Q. Look at the P value there and compare it</p> <p>6 to the P value on Exhibit 13, net daily shares</p> <p>7 transacted as a percentage of the total reported</p> <p>8 daily volume.</p> <p>9 A. Okay. That would appear, if I'm reading</p> <p>10 things correctly, to correspond to what you refer to</p> <p>11 as Exhibit 4.</p> <p>12 Q. Pardon? That would correspond to the net</p> <p>13 daily shares transacted as a percentage of total</p> <p>14 reported trading value on Exhibit 13. Right?</p> <p>15 A. The numbers on that page of Exhibit 14</p> <p>16 appear to correspond to the P values of Regression 4</p> <p>17 on Exhibit 13.</p> <p>18 Q. You mean 4A?</p> <p>19 A. Okay. Now I'm lost.</p> <p>20 Q. Pardon? 4 or -- 4 has a 74.46. 4A is</p> <p>21 74.08.</p> <p>22 A. The numbers in Columns AU -- no. Yes. AU</p> <p>23 through AW appear to correspond to the P values of</p> <p>24 Regression 4 in Exhibit 13.</p> <p>25 Q. Okay. Now, take -- now -- then there's a</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 column called net daily shares transacted on Exhibit</p> <p>3 Number 13.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Now, that is listed as a fifth regression</p> <p>7 on Exhibit Number 13. Is that correct?</p> <p>8 A. You keep referring to Exhibit 13. This is</p> <p>9 -- just to make a distinction between Exhibit 13 on</p> <p>10 the record and Exhibit 13 in the report.</p> <p>11 Q. Exhibit 13 on -- let's call it Deposition</p> <p>12 Exhibit. When I refer to the document that's in your</p> <p>13 spreadsheet, it's a tab.</p> <p>14 A. As long as there's that distinction, I'm</p> <p>15 fine.</p> <p>16 Q. Well, we need to make the record clear,</p> <p>17 and I'm glad you pointed that out.</p> <p>18 Now, with regard to the net daily shares</p> <p>19 transacted on Exhibit 13 -- do you see that?</p> <p>20 MR. SOHN: Deposition Exhibit 13.</p> <p>21 A. Okay.</p> <p>22 Q. Net daily shares transacted, it has a</p> <p>23 figure of 0.108 under Regression 5.</p> <p>24 What does that conform to on Exhibit</p> <p>25 Number 14?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 corner of your Deposition Exhibit 13?</p> <p>3 A. I don't see that note. So I don't know</p> <p>4 what it necessarily means.</p> <p>5 Q. Pardon?</p> <p>6 A. I do see that note. I don't know exactly</p> <p>7 what it is referring to.</p> <p>8 Q. You don't know whether or not it --</p> <p>9 THE VIDEOGRAPHER: Excuse me, Counsel, I</p> <p>10 have to stop you here. The time is 5:44. We're</p> <p>11 going off the record. This marks the end of Tape</p> <p>12 Number 5.</p> <p>13 (Recess.)</p> <p>14 THE VIDEOGRAPHER: The time is 5:54. We</p> <p>15 are back on the record. This is tape Number 6.</p> <p>16 Q. Now, in your report under Tab 13 -- I'm</p> <p>17 sorry. There's a 13A and 13B.</p> <p>18 A. Yes.</p> <p>19 Q. And we've been basically looking at 13B</p> <p>20 on -- or Tab Exhibit 13B, which is Exhibit 13. And</p> <p>21 that the -- you have a regression -- you have four</p> <p>22 regressions in your report in 13B for this time</p> <p>23 period March 1st through May 31st.</p> <p>24 Do you see that?</p> <p>25 A. Correct. Exhibit --</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 MR. SOHN: Objection.</p> <p>3 A. I don't know.</p> <p>4 Q. Take a look at -- you need to go to the</p> <p>5 next blue divider. I'm sorry. I didn't make myself</p> <p>6 clear, how this spreadsheet was set up. Go past the</p> <p>7 next blue sheet. Now you'll get the next set of</p> <p>8 columns in your spreadsheet.</p> <p>9 Now, where do you find the corresponding</p> <p>10 number for regression, the P value for Regression</p> <p>11 Number 5?</p> <p>12 A. The P values on the Deposition Exhibit 13</p> <p>13 appear to correspond to the P values in Columns -- on</p> <p>14 the page of Exhibit 14 that I'm looking at with</p> <p>15 column number -- Column headings BA, BB, and BC.</p> <p>16 Q. And that is net daily trading?</p> <p>17 A. That's what it is labeled, yes.</p> <p>18 Q. And that doesn't include transfers in or</p> <p>19 principals. Right?</p> <p>20 A. I believe that's correct.</p> <p>21 Q. And, in fact, if you look at your</p> <p>22 Deposition Exhibit Number 13, it indicates at the top</p> <p>23 when transfers and principals are not included in the</p> <p>24 regressions.</p> <p>25 Do you see that in the upper right-hand</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. And it goes through what we've just marked</p> <p>3 Column AW from Exhibit 14.</p> <p>4 A. The last part I missed.</p> <p>5 Q. Well, on Exhibit 13 -- let's just --</p> <p>6 Deposition Exhibit 13 is -- it says, "net daily</p> <p>7 shares transacted as a percentage of total reported</p> <p>8 trading volume."</p> <p>9 Do you see that column?</p> <p>10 A. Yes.</p> <p>11 Q. And that is reported as a Regression 4,</p> <p>12 and it has a -- a figure, a P value figure, of .070.</p> <p>13 Okay? Which conforms to -- you have a number under</p> <p>14 Regression 4 and the top part is .15.</p> <p>15 Do you see that?</p> <p>16 A. I do see the .15 number.</p> <p>17 Q. What does the .15 number mean, refer to?</p> <p>18 A. That's the coefficient associated with</p> <p>19 this variable.</p> <p>20 Q. The coefficient, and it's .15?</p> <p>21 A. Yes.</p> <p>22 Q. Now -- and that -- then in Exhibit Number</p> <p>23 13, there's net daily shares transacted, and there's</p> <p>24 no number and, in fact, there's no regression listed</p> <p>25 up there. Why not?</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 A. I don't know how this file was organized.</p> <p>3 Q. Hmm?</p> <p>4 A. I don't know how this file was organized.</p> <p>5 This is probably the portion of the file that was</p> <p>6 used in preparation for Exhibit 13B in the report.</p> <p>7 Q. Which is Exhibit Number 4?</p> <p>8 A. The report is Exhibit 4, yes.</p> <p>9 Q. So the first 4 regressions were used, but</p> <p>10 not the fifth regression?</p> <p>11 A. They were all used. Exhibit 13B reflects</p> <p>12 four regressions.</p> <p>13 Q. What is the result of Regression Number 5</p> <p>14 in terms of the statistical significance on Exhibit</p> <p>15 Number 13, which is BP4 Tab 13B?</p> <p>16 A. In the Deposition Exhibit 13, you mean?</p> <p>17 Q. Yes, in Exhibit 13. What is the</p> <p>18 significance of the P value of .0108?</p> <p>19 A. That would not be a statistically</p> <p>20 significant result.</p> <p>21 Q. That would what?</p> <p>22 A. That would not be a statistically</p> <p>23 significant result.</p> <p>24 Q. Why not?</p> <p>25 A. As I explained earlier, and as it is</p>	<p>1 T. Beloreshki - Direct</p> <p>2 figure .0108 was statistically significant in your</p> <p>3 Deposition Exhibit 13?</p> <p>4 A. No. I believe the question you had was</p> <p>5 what other tests we had performed.</p> <p>6 Q. That wasn't my question.</p> <p>7 A. Then I apologize.</p> <p>8 Q. My original question was: What does -- in</p> <p>9 the regression 5 on Exhibit 13, what does .108 stand</p> <p>10 for in terms of statistical significance?</p> <p>11 A. And I responded that it is not a</p> <p>12 statistically significant result.</p> <p>13 Q. Is it within 95 percent confidence?</p> <p>14 A. No.</p> <p>15 Q. What would that number have to be to be</p> <p>16 within 95 percent confidence?</p> <p>17 MR. SOHN: What number?</p> <p>18 MR. GUIDO: Regression Number 5 on</p> <p>19 Deposition Exhibit 13.</p> <p>20 A. Roughly speaking, something in the range</p> <p>21 of 002. I apologize. .05 divided by 18, whatever</p> <p>22 that number happens to be.</p> <p>23 Q. .05 divided by what?</p> <p>24 A. 18.</p> <p>25 Q. Hmm?</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 mentioned in the report, we used a battery or family</p> <p>3 of tests, and when you do so you have to interpret</p> <p>4 these statistics and P values accordingly.</p> <p>5 Q. What was the battery of other tests?</p> <p>6 A. For example -- well, there's exhibits that</p> <p>7 reflect statistical analyses -- let me not talk -- so</p> <p>8 you have Exhibit 11, which refers to statistical --</p> <p>9 Q. Hold it. Don't go so quickly.</p> <p>10 A. Let's look at Exhibit 10.</p> <p>11 Q. Let's look at Exhibit 11.</p> <p>12 A. Okay.</p> <p>13 Q. First of all, Exhibit 11. Okay? We're</p> <p>14 looking at 11B. Right?</p> <p>15 A. Correct. 11B -- Exhibit 11 in general</p> <p>16 reflects nonparametric tests that were performed, and</p> <p>17 the reason we did this is so that you or somebody</p> <p>18 who's looking at the data need not rely on a</p> <p>19 parametric assumption as to the distribution of the</p> <p>20 underlying data, so that's why Exhibit 11 was added</p> <p>21 to the analysis. Then Exhibit 10 --</p> <p>22 Q. Let's stick with Exhibit 11.</p> <p>23 A. Okay.</p> <p>24 Q. I'm sorry. Exhibit 11, you're saying, was</p> <p>25 done because you wanted to check whether or not the</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. 18. The number of regressions that he</p> <p>3 performed.</p> <p>4 Q. I don't see 18 regressions.</p> <p>5 A. Well, there were nine regressions</p> <p>6 performed and provided in our working papers for each</p> <p>7 of the two time frames.</p> <p>8 Q. Wait a minute. Aren't you mixing apples</p> <p>9 and oranges? You're taking one time frame and using</p> <p>10 it to measure the results of another time frame?</p> <p>11 What is this, Fantasy Land?</p> <p>12 MR. SOHN: Objection.</p> <p>13 A. No, it is not.</p> <p>14 Q. This is not statistics, and you know it.</p> <p>15 MR. SOHN: Mr. Guido, that's absolutely</p> <p>16 inappropriate.</p> <p>17 Q. Well, tell me the literature that supports</p> <p>18 that conclusion. What is the literature? Cite it.</p> <p>19 A. Sir, when you perform a statistical</p> <p>20 analysis, as we discussed earlier, there is a</p> <p>21 probability that you would reject a nonhypothesis</p> <p>22 when that hypothesis is true; that is, there is what</p> <p>23 is called a Type 1 error. The likelihood of</p> <p>24 observing Type 1 error increases with the number of</p> <p>25 tests performed. This is why statisticians use</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 various adjustments, in order to account for that.</p> <p>3 Q. And the literature says you compare</p> <p>4 different time frames to do that calculation of</p> <p>5 platform error. Where do you find that?</p> <p>6 A. When you run a number of tests, you have</p> <p>7 to adjust for the fact that you're increasing the</p> <p>8 likelihood of a Type 1 error, and this is what the</p> <p>9 adjustment that needs to be made is.</p> <p>10 Q. But you chose not to report it?</p> <p>11 A. Report what?</p> <p>12 Q. You chose not to include the net daily</p> <p>13 shares transacted column in your report. Why not?</p> <p>14 A. The report includes exhibits -- various</p> <p>15 exhibits, various components. I -- what I can tell</p> <p>16 you is that Exhibit 13 fairly summarizes our</p> <p>17 findings.</p> <p>18 Q. No. I understand -- I understand what</p> <p>19 you're saying in terms of you think it supports your</p> <p>20 findings, but it also admits something that doesn't</p> <p>21 support your findings, and that is Regression Number</p> <p>22 5 that is, on its face, a correlation of less than 95</p> <p>23 percent, just on its face.</p> <p>24 Don't give me this sort of testing. I</p> <p>25 just want to know that this regression standing on</p>	<p>1 T. Beloreshki - Direct</p> <p>2 family or battery of tests.</p> <p>3 Q. Where? Show me.</p> <p>4 A. I'll look it up. That would be Paragraph</p> <p>5 55.</p> <p>6 Q. Where? Paragraph 55?</p> <p>7 A. Yes.</p> <p>8 Q. A battery of generally accepted</p> <p>9 statistically supported conclusions that Rhino</p> <p>10 principals had no impact, as shown in Exhibit 9, a</p> <p>11 statistical analysis using parametric statistical</p> <p>12 tests fails to reject the hypothesis that the</p> <p>13 statistical analysis was similar to whether Rhino was</p> <p>14 active in the marketplace. Okay? That's only</p> <p>15 talking about a test. When you're talking about</p> <p>16 Regression Number 1, that's not talking about</p> <p>17 Regression Number 5.</p> <p>18 A. No. The question was whether we refer to</p> <p>19 battery of tests in the report, and that's the</p> <p>20 answer.</p> <p>21 Q. That's go back to Exhibit Number 13.</p> <p>22 Okay? Maybe this is will help you understand --</p> <p>23 Deposition Exhibit 13. See the column that says</p> <p>24 "mark," or the line that says "mark"?</p> <p>25 A. I do see that.</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 its own on Exhibit 13 of your deposition, is that</p> <p>3 within 95 percent confidence level on its own?</p> <p>4 A. This regression cannot be viewed on its</p> <p>5 own because we ran a family of tests.</p> <p>6 Q. I understand that. I want to know whether</p> <p>7 based on its own -- okay, forget your battery of</p> <p>8 tests -- we'll deal --</p> <p>9 A. I --</p> <p>10 Q. Sure you can. You did this regression.</p> <p>11 The question is: What does 0.0108 stand for in terms</p> <p>12 of a P value?</p> <p>13 A. It's a P value associated with that</p> <p>14 regression.</p> <p>15 Q. And is it a P value that shows 95 percent</p> <p>16 confidence level?</p> <p>17 A. No.</p> <p>18 Q. And is it because of the battery of tests,</p> <p>19 standing on its own, does it show a P value --</p> <p>20 A. It cannot stand on its own.</p> <p>21 Q. I'm sorry. Where in your report do you</p> <p>22 talk about making any such adjustments? Exhibit</p> <p>23 Number 4. Show me where you talk about the need to</p> <p>24 make such adjustments.</p> <p>25 A. The report, I believe, refers to the</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Q. All right. Now -- And you see that</p> <p>3 there's a mark under net daily shares transacted?</p> <p>4 A. What do you mean?</p> <p>5 MR. SOHN: An asterisk?</p> <p>6 A. I do see an asterisk.</p> <p>7 Q. You see the asterisk?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And it's under net daily shares</p> <p>10 transacted?</p> <p>11 A. Yes.</p> <p>12 Q. And you see your footnote, "Asterisk</p> <p>13 denotes significance at 5 percent"?</p> <p>14 A. Where's that footnote?</p> <p>15 Q. Under the notes that are on Exhibit 13.</p> <p>16 A. Correct. I do see that.</p> <p>17 Q. Now, doesn't the asterisk indicate that</p> <p>18 the net daily sales transacted P value regression</p> <p>19 denotes a significance at 5 percent?</p> <p>20 A. If you don't take into consideration the</p> <p>21 proper adjustment for P value.</p> <p>22 Q. That was my question. Okay? So if you</p> <p>23 don't take your battery of tests adjustment, which</p> <p>24 you now say is required, if you don't take that into</p> <p>25 consideration, is it that that figure, 0.0108,</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 denotes significance at 5 percent if you don't do</p> <p>3 your battery of test analysis?</p> <p>4 A. If one were to run a single regression</p> <p>5 analysis and -- and that would result in a P value of</p> <p>6 .01, that would be a statistically significant</p> <p>7 result.</p> <p>8 Q. Thank you. Now, why didn't you include</p> <p>9 that figure in your report and then explain that your</p> <p>10 battery of tests indicated that it wouldn't be relied</p> <p>11 upon?</p> <p>12 A. There was no discussion of including or</p> <p>13 not including that I can recall.</p> <p>14 Q. No. I didn't ask you that. I asked you</p> <p>15 why you didn't include it and then explain in your</p> <p>16 report why it wasn't relevant.</p> <p>17 A. There was -- there was no decision on my</p> <p>18 part one way or the other.</p> <p>19 Q. Who made the decision?</p> <p>20 A. I don't know the that a decision was made.</p> <p>21 Q. Let me show you what has been marked in</p> <p>22 your spreadsheet as old Exhibit 11.</p> <p>23 MR. GUIDO: This is Exhibit Number 15.</p> <p>24 (Whereupon, Exhibit Prowse Beloreshki-15</p> <p>25 is marked for identification by the reporter.)</p>	<p>1 T. Beloreshki - Direct</p> <p>2 testifying about this report and this report has all</p> <p>3 of these statistical regression analyses, and you</p> <p>4 produce this tab old Exhibit 11 to us, and you don't</p> <p>5 know what it is?</p> <p>6 A. The question was if I knew who performed</p> <p>7 these analyses, and the answer is I don't know.</p> <p>8 Q. Who directed the performing the analysis?</p> <p>9 A. That would have been me, in all</p> <p>10 likelihood.</p> <p>11 Q. All right. Now, this has the -- it has</p> <p>12 the same sort of format, although it has certain</p> <p>13 things cut off on it and it has certain time periods</p> <p>14 on it, and the one that this one is is the time</p> <p>15 period number 5, which is March 1st, 2001 and April</p> <p>16 30th, 2001, and it lists five different time periods.</p> <p>17 Do you see that, 1 through 5? How were</p> <p>18 those time periods selected?</p> <p>19 A. When I was initially approached to work in</p> <p>20 the criminal case, my task -- the way I understood it</p> <p>21 was to perform any statistic analysis, slice and dice</p> <p>22 the data any which way, in order to figure out how</p> <p>23 manipulation could have occurred.</p> <p>24 As a result, we developed a framework and,</p> <p>25 you know, set up a number of model specifications and</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 Q. This came from BP 6 in the spreadsheet you</p> <p>3 produced and it's under Tab old Exhibit 11. Okay?</p> <p>4 And it's for a different time period, 3-1-2001 to</p> <p>5 4-30-2001.</p> <p>6 I want to know -- one of the questions I</p> <p>7 have for you is why -- why did you prepare Exhibit</p> <p>8 Number 11 with the time period March 1st, 2001,</p> <p>9 through April 30th, 2001?</p> <p>10 A. I don't have a recollection of asking</p> <p>11 anyone to prepare that exhibit. There may have been</p> <p>12 a discussion to use that time frame.</p> <p>13 Q. Pardon?</p> <p>14 A. I don't have a recollection of performing</p> <p>15 that analysis or asking Erica to do it.</p> <p>16 Q. Was Erica working with you at FTI?</p> <p>17 A. Yes.</p> <p>18 Q. Wasn't Exhibit 15, old Exhibit 11,</p> <p>19 prepared when you were at NERA?</p> <p>20 A. Oh. I didn't realize that. I don't know.</p> <p>21 Q. The metadata with this document indicates</p> <p>22 it was prepared in 2002. Was it prepared at NERA?</p> <p>23 A. If it was prepared at NERA, I don't know</p> <p>24 who prepared this.</p> <p>25 Q. You have no idea. You're the expert</p>	<p>1 T. Beloreshki - Direct</p> <p>2 in addition, used various time frames. These -- time</p> <p>3 frame 2 is one of the time frames we have used in</p> <p>4 this case. It reflects, one, the vast portions of</p> <p>5 the time frames that are specified in the complaint,</p> <p>6 as well as a concentration of six of the nine, I</p> <p>7 believe, conversion periods. This is a reason why</p> <p>8 you might want to look into this time frame. Time</p> <p>9 frame 3 includes, I believe, all the trading that was</p> <p>10 done by Rhino, so this would be the objective reason</p> <p>11 for relying on that.</p> <p>12 Exhibit 4 -- my sense is that the first</p> <p>13 conversion was done at some point in November, so in</p> <p>14 between November of 2000 and September of 2001, that</p> <p>15 period would probably encompass all the conversions,</p> <p>16 or at least a substantial portion of them.</p> <p>17 Period Number 1, probably the same thing.</p> <p>18 It includes probably seven of the nine conversions</p> <p>19 and it creates a rather shorter -- you know, somewhat</p> <p>20 shorter time frame. I don't know about Number 5,</p> <p>21 but, you know, these will be objective criteria that</p> <p>22 come to mind when I look at these time frames.</p> <p>23 Q. So the first -- Regression 5 you don't</p> <p>24 know what the significance of March 1st through April</p> <p>25 30th was?</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 A. No. No. I don't have a --</p> <p>3 Q. Who made this -- who made these</p> <p>4 selections?</p> <p>5 A. I was probably involved in this.</p> <p>6 Q. Who else?</p> <p>7 A. I don't know.</p> <p>8 Q. Was Caryn Schechtman?</p> <p>9 A. No.</p> <p>10 Q. Well, how did you know what the criteria</p> <p>11 were that you just gave me?</p> <p>12 A. There may well have been something in the</p> <p>13 criminal complaint and for the others I gave you</p> <p>14 reasons that make sense to an economist why you might</p> <p>15 want to look at this period from an objective point</p> <p>16 of view.</p> <p>17 Q. What's the reason for 11-22-2000 to</p> <p>18 5-31-01?</p> <p>19 A. 11-22-2000 was the issuance day for the</p> <p>20 convertible, I believe, so it makes sense to look at</p> <p>21 that. At least one other conversion was in November,</p> <p>22 so it might have been included in that time frame</p> <p>23 although it might have been early in November. And</p> <p>24 then you run a period through the end of May, so you</p> <p>25 include at least six of the conversion the five-day</p>	<p>1 T. Beloreshki - Direct</p> <p>2 joint decision by me and Steve Prowse as to what time</p> <p>3 frames would be appropriate to analyze from an</p> <p>4 economist's point of view.</p> <p>5 Q. And what was it -- what was the criteria</p> <p>6 that you and Mr. Prowse used to determine what was</p> <p>7 appropriate?</p> <p>8 A. Well, the one thing that I tried to do is</p> <p>9 use as objective a set of criteria as possible, so</p> <p>10 the first period includes all Rhino trading. The</p> <p>11 start point and the end point are determined by the</p> <p>12 data. There is no input by me or by Steve Prowse on</p> <p>13 that, and to the extent that you have the same</p> <p>14 participants, presumably guided by consistent set of</p> <p>15 incentives, perhaps too many too late, perhaps not,</p> <p>16 that is a set of data that warrants analysis.</p> <p>17 The other one, the period between March</p> <p>18 and May of '01 bows to -- as I said, includes the</p> <p>19 many time frames that we were reading into the</p> <p>20 complaint as possible focus of the complaint, and it</p> <p>21 also includes the first time when the debentures</p> <p>22 become convertible and includes five or six of the</p> <p>23 conversion periods -- basically, a huge concentration</p> <p>24 of the conversion periods, all the look back periods</p> <p>25 that I and Steve understood were the focus of SEC's.</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 look back periods that one would be particularly</p> <p>3 interested in, so this period strikes a balance</p> <p>4 between an objectively selected start date and an</p> <p>5 objectively selected final date, so as to include the</p> <p>6 life of the security and a heavy concentration of the</p> <p>7 conversion look back periods, which is presumably the</p> <p>8 type of periods if one would want to have a more</p> <p>9 serious look.</p> <p>10 Q. Why was 9-28-2001 picked as a closing</p> <p>11 date?</p> <p>12 A. My sense is that that probably would</p> <p>13 include, if not all, maybe seven or eight of the</p> <p>14 conversion periods.</p> <p>15 Q. And why was -- the only two that were</p> <p>16 included were Regression Number -- Time period 2 and</p> <p>17 Time period 3, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Why were all the others excluded?</p> <p>20 A. They were not excluded.</p> <p>21 Q. Well, there's nothing in the report to</p> <p>22 reflect the results of those regressions for those</p> <p>23 time periods, is there?</p> <p>24 A. This was -- the selection of the time</p> <p>25 periods reflected in the report are the results of a</p>	<p>1 T. Beloreshki - Direct</p> <p>2 So that's the rationale.</p> <p>3 Q. You know, you talked about a number of</p> <p>4 ways of sort of determining the validity of this</p> <p>5 statistical analysis. You talked about a bank of</p> <p>6 analysis. Was that the term that you used?</p> <p>7 A. Family?</p> <p>8 Q. Family of analysis.</p> <p>9 A. Of tests.</p> <p>10 Q. And that's why you decided not to include</p> <p>11 the net daily share of trading in your report?</p> <p>12 MR. SOHN: Objection.</p> <p>13 A. No.</p> <p>14 Q. Or a battery, I think you said a battery?</p> <p>15 A. Battery of tests, family of tests.</p> <p>16 Q. I'm sorry?</p> <p>17 A. Battery of tests, family of tests. I use</p> <p>18 them interchangeably.</p> <p>19 None of the analyses we performed were</p> <p>20 consistent with statistical significance, and Exhibit</p> <p>21 13 in the report reflects that.</p> <p>22 Q. So you chose not to include something</p> <p>23 which you just now testified on its own denotes</p> <p>24 statistical significance, but a battery of other</p> <p>25 analyses led you to exclude that from your report?</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 MR. SOHN: Objection to form.</p> <p>3 A. I believe that mischaracterizes my</p> <p>4 testimony. We performed a number of regression</p> <p>5 analyses. I believe the number is 9 per time frame,</p> <p>6 and Exhibit 13 summarizes our findings.</p> <p>7 Q. But where -- okay. Where does it say in</p> <p>8 this report that you prepared nine regression</p> <p>9 analyses for two time frames?</p> <p>10 A. The report doesn't say that. We did</p> <p>11 provide it with our working files.</p> <p>12 Q. Pardon?</p> <p>13 A. We did provide it with our working files.</p> <p>14 Q. You did? I'm sorry, but I -- I get a</p> <p>15 little confused. I don't see -- you say that Exhibit</p> <p>16 Number 14, okay, which is for the time frame March</p> <p>17 1st through May 31st, that includes nine different</p> <p>18 regressions?</p> <p>19 MR. SOHN: Objection.</p> <p>20 A. I don't know where Exhibit 14 exactly</p> <p>21 comes from. My understanding is that we performed</p> <p>22 nine regressions for each of the two time frames.</p> <p>23 Q. Then there were nine regressions of</p> <p>24 different independent variables?</p> <p>25 A. Correct. Nine different model</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. Not with respect to that regression.</p> <p>3 Q. Because of the battery of tests. Right?</p> <p>4 A. Because there was a family of tests</p> <p>5 conducted.</p> <p>6 MR. GUIDO: Let's take a short break and I</p> <p>7 think I can finish up.</p> <p>8 THE VIDEOGRAPHER: The time is 6:28.</p> <p>9 We're going off the record.</p> <p>10 (Whereupon, a recess is taken.)</p> <p>11 THE VIDEOGRAPHER: The time is 6:40.</p> <p>12 We're back on the record.</p> <p>13 Q. Now, let me see if I understand what you</p> <p>14 said about the battery of tests and how you correct</p> <p>15 them. Is the reason for the battery of tests to</p> <p>16 address an issue that's called data mining?</p> <p>17 A. Yes.</p> <p>18 Q. So you do it -- it's done in a situation</p> <p>19 where you do a series of regressions until you</p> <p>20 finally get one that shows a statistical significance</p> <p>21 and then the question is you want to double-check</p> <p>22 whether or not you're engaged in data mining. Is</p> <p>23 that a fair characterization of what the battery of</p> <p>24 tests is?</p> <p>25 A. No. That's a -- a incorrect</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 specifications.</p> <p>3 Q. And none of them, other than the fifth</p> <p>4 regression, regression Number 5A which is on</p> <p>5 Exhibit 14, Tab 13B, Column BC, showed on its face a</p> <p>6 statistical correlation?</p> <p>7 A. None of them showed significance including</p> <p>8 Exhibit 5, what you refer to --</p> <p>9 Q. Exhibit 5, I said, on its face?</p> <p>10 A. There is no such term as "on its face."</p> <p>11 Q. Well, why did you put the mark -- take a</p> <p>12 look at Exhibit Number 15 again. Okay? Or to make</p> <p>13 it easier, look at Exhibit 13. That's the March 1</p> <p>14 through May 31st?</p> <p>15 A. Yes.</p> <p>16 Q. See the mark under Regression 5?</p> <p>17 A. Correct.</p> <p>18 Q. The asterisk? And then you testified that</p> <p>19 that means, denotes significance at 5 percent.</p> <p>20 That's what this document says?</p> <p>21 A. That's what the document says, yes.</p> <p>22 Q. So on its own, without doing your battery</p> <p>23 of tests, it denotes statistical significance, does</p> <p>24 it not?</p> <p>25 MR. SOHN: Objection.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 characterization. If you want a large number of</p> <p>3 tests, some portion of those are likely to show</p> <p>4 significance even if there is no such thing in the</p> <p>5 data.</p> <p>6 Q. Okay. So, therefore, you do what to</p> <p>7 correct for the possibility of data mining?</p> <p>8 A. In circumstances when a large number of</p> <p>9 tests are performed, one needs to adjust either the</p> <p>10 interpretation of the P values or the T statistics.</p> <p>11 Q. How is that done?</p> <p>12 A. That adjustment is done -- it's called a</p> <p>13 Bonferroni adjustment.</p> <p>14 Q. Could you spell that?</p> <p>15 A. B-O-N-F-E-R-R-O-N-I.</p> <p>16 Q. Bonferroni adjustment?</p> <p>17 A. Correction. I would call it correction.</p> <p>18 Q. Mathematically, what would you do?</p> <p>19 A. With respect to P values, you simply</p> <p>20 divide the P value by the number of tests performed.</p> <p>21 Q. Did you produce to the SEC all the</p> <p>22 analyses that you did in preparing your report?</p> <p>23 A. I have no reason to believe we didn't do</p> <p>24 that.</p> <p>25 Q. Did you produce a Bonferroni correction to</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 the SEC?</p> <p>3 A. I don't know. I just don't know.</p> <p>4 Q. Do you recall doing a spreadsheet of that</p> <p>5 Bonferroni correction?</p> <p>6 A. No. I certainly didn't do a spreadsheet</p> <p>7 like that. Whether Erica did or not, I don't know.</p> <p>8 Q. Pardon?</p> <p>9 A. What Erica did or didn't do, I don't know.</p> <p>10 Q. Wasn't she working for you?</p> <p>11 A. She is.</p> <p>12 Q. She was working under your direction.</p> <p>13 Right?</p> <p>14 A. Yes.</p> <p>15 Q. Did you direct her to do it?</p> <p>16 A. No. We have worked together for quite a</p> <p>17 number of -- I was going to say years. 12 years, so</p> <p>18 there was no need for such an instruction.</p> <p>19 Q. Did she tell you she had done it?</p> <p>20 A. I believe these conversations generally</p> <p>21 were -- none of the tests we ran.</p> <p>22 Q. Pardon?</p> <p>23 A. These conversations were essentially that</p> <p>24 none of the tests we ran showed statistical</p> <p>25 significance.</p>	<p>1 T. Beloreshki - Direct</p> <p>2 MR. SOHN: I may.</p> <p>3 MR. GUIDO: I don't think you have any</p> <p>4 standing in this.</p> <p>5 Q. Do you mind if we call her and ask her</p> <p>6 what she did?</p> <p>7 A. I don't have a say on this.</p> <p>8 Q. Pardon?</p> <p>9 A. I don't have a say on this. You can --</p> <p>10 MR. SOHN: Mr. Guido, I don't see how</p> <p>11 that's, first of all, an appropriate question of</p> <p>12 Mr. Beloreshki --</p> <p>13 MR. GUIDO: We just had a question of</p> <p>14 whether or not he has an objection to me doing it.</p> <p>15 It's his report. He just testified that he -- that</p> <p>16 she may have -- may or may not have done this</p> <p>17 Bonferroni correction. I just want to know if she</p> <p>18 did it or not.</p> <p>19 A. When you interpret the results -- and we</p> <p>20 have done this in the past in these circumstances and</p> <p>21 in the circumstances of cases that don't involve</p> <p>22 market manipulation -- we have applied Bonferroni</p> <p>23 adjustments. That's as much as I can tell you.</p> <p>24 Q. And when you've done that, is there some</p> <p>25 sort of spreadsheet that reflects doing it?</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 Q. Did you discuss with her specifically</p> <p>3 whether she had performed a Bonferroni correction</p> <p>4 analysis?</p> <p>5 A. I don't recall --</p> <p>6 Q. Would you spell her name?</p> <p>7 A. Sure. Erica Rose.</p> <p>8 Q. E-R --</p> <p>9 A. I-C-A.</p> <p>10 Q. Where does she live?</p> <p>11 A. Seattle.</p> <p>12 Q. Seattle, Washington?</p> <p>13 A. Yes.</p> <p>14 Q. Does FTI have an office there?</p> <p>15 A. No.</p> <p>16 Q. Do you know her phone number?</p> <p>17 A. Her work number?</p> <p>18 Q. Uh-huh.</p> <p>19 A. Yes. 206-689 --</p> <p>20 Q. Pardon?</p> <p>21 A. 206-689-4479.</p> <p>22 Q. 44 what?</p> <p>23 A. 79.</p> <p>24 Q. Do you mind if we call her and interview</p> <p>25 her?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. There is a spreadsheet --</p> <p>3 Q. Let me -- isn't there just a form? Isn't</p> <p>4 there a form spreadsheet that you have with the</p> <p>5 statistical analysis to do the Bonferroni correction</p> <p>6 in your files?</p> <p>7 A. I do not have a form spreadsheet.</p> <p>8 Q. Have you form spreadsheet in the past?</p> <p>9 A. The Bonferroni adjustment, it's a rather</p> <p>10 straightforward arithmetic calculation, so I can look</p> <p>11 at a P value and tell you whether or not that is</p> <p>12 indicative of significance or not, so I don't</p> <p>13 necessarily need to do the calculation on a</p> <p>14 spreadsheet.</p> <p>15 And, two, I have a general sense of what</p> <p>16 the critical values are in terms of T statistics, so</p> <p>17 that I don't necessarily need to perform these</p> <p>18 calculations either.</p> <p>19 Q. What was the T statistic?</p> <p>20 We have done a search of your BP0006</p> <p>21 spreadsheet that you produced to us, and we found</p> <p>22 that there were a number of tabs in there, Regression</p> <p>23 1 through Regression 5, and what I would like to know</p> <p>24 is: In determining applying the Bonferroni</p> <p>25 correction, what is the significance of the T</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 statistic?</p> <p>3 Called a T stat. in your form --</p> <p>4 spreadsheets.</p> <p>5 A. Could well be. Generally speaking, if you</p> <p>6 have a single regression and if the T statistic</p> <p>7 associated with a particular coefficient is 1.96 or</p> <p>8 above that's when you would talk about projecting now</p> <p>9 and finding statistical significance.</p> <p>10 When you have a Bonferroni adjustment,</p> <p>11 that would mean that that level of T statistic,</p> <p>12 statistical level of T statistic that has to be</p> <p>13 overcome, has to be higher.</p> <p>14 Q. How much higher would it have to be?</p> <p>15 A. That would depend on the number of tests</p> <p>16 that they're analyzed.</p> <p>17 Q. Let's say that you did five regressions</p> <p>18 for this time period in this set of data.</p> <p>19 A. I don't know the exact number.</p> <p>20 Q. Well, wouldn't you use the time -- the</p> <p>21 five regressions that you did for that time period?</p> <p>22 A. We did not.</p> <p>23 Q. So you didn't do a Bonferroni correction?</p> <p>24 A. No, we did.</p> <p>25 Q. Hmm?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 Court ordered it to be provided. You didn't provide</p> <p>3 it to the SEC, did you?</p> <p>4 MR. SOHN: Objection.</p> <p>5 A. I provided what I was requested to</p> <p>6 provide.</p> <p>7 Q. And you weren't requested until the Court</p> <p>8 ordered you to. Right?</p> <p>9 MR. SOHN: Objection.</p> <p>10 A. I requested them -- I provided them when I</p> <p>11 was requested to provide them.</p> <p>12 Q. I didn't ask you that?</p> <p>13 A. I don't understand the question.</p> <p>14 Q. Remember, you looked at Exhibit Number 7</p> <p>15 and that was the one that had the judge's hand --</p> <p>16 A. Yes.</p> <p>17 Q. That was the first time you were asked to</p> <p>18 provide any documents to the SEC, isn't it?</p> <p>19 A. Correct.</p> <p>20 Q. So it was after the Court ordered you to</p> <p>21 provide the documents? You didn't provide the backup</p> <p>22 documents voluntarily, the Court had to order you to</p> <p>23 do it?</p> <p>24 MR. SOHN: Objection. Objection.</p> <p>25 A. It was never an issue. I was -- the data</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 A. We -- We were interpreted the results of</p> <p>3 our regression analysis with Bonferroni adjustment.</p> <p>4 Q. Didn't you just throw it out because you</p> <p>5 didn't like the results you got?</p> <p>6 A. No.</p> <p>7 Q. Why did you include the others if you</p> <p>8 decided that under the Bonferroni adjustment, none of</p> <p>9 them were relevant?</p> <p>10 A. I don't understand the question.</p> <p>11 Q. You say you used the Bonferroni</p> <p>12 correction?</p> <p>13 A. Yes.</p> <p>14 Q. And you threw out --</p> <p>15 A. No regression has been thrown out.</p> <p>16 Q. It's not included in your report.</p> <p>17 A. We have run nonregressions for those in</p> <p>18 the report. No regressions have been thrown out.</p> <p>19 All have been provided to you.</p> <p>20 Q. I understand that, but why didn't you put</p> <p>21 it in the report?</p> <p>22 A. A report is not something that would</p> <p>23 include every single piece of analysis or every</p> <p>24 thought that an expert would have.</p> <p>25 Q. But you only provided it to us after the</p>	<p>1 T. Beloreshki - Direct</p> <p>2 was there. Whoever was interested could have taken</p> <p>3 it.</p> <p>4 Q. You've been an expert witness in previous</p> <p>5 cases, haven't you?</p> <p>6 A. Yes.</p> <p>7 Q. In those previous cases, when you produced</p> <p>8 documents -- forget when DLA Piper is counsel. In</p> <p>9 cases when DLA Piper is not in it, isn't it typical</p> <p>10 that you provide all the backup spreadsheets for your</p> <p>11 reports?</p> <p>12 A. It is typical, and it rarely goes to</p> <p>13 subpoena. Typical situation, at least in my</p> <p>14 experience, is that someone asks me for my work</p> <p>15 papers and I provide it to them.</p> <p>16 Q. And that's usually at the same time you</p> <p>17 produce your report, isn't it?</p> <p>18 A. No.</p> <p>19 Q. No?</p> <p>20 A. No.</p> <p>21 Q. Sometime afterwards?</p> <p>22 A. Typically afterwards.</p> <p>23 Q. Typically afterwards. Okay, but nobody</p> <p>24 asked you for the information prior to it being</p> <p>25 subpoenaed from you, did they?</p>

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<p>1 T. Beloreshki - Direct</p> <p>2 A. Not that I can recall.</p> <p>3 Q. In fact, nobody asked you until it was</p> <p>4 ordered to be produced?</p> <p>5 MR. SOHN: Objection. Fifth time you've</p> <p>6 asked the question.</p> <p>7 A. I produced my files when I was asked to do</p> <p>8 so.</p> <p>9 Q. And the first time you were asked to do so</p> <p>10 was when you were handed the handwritten Court order.</p> <p>11 Correct?</p> <p>12 MR. SOHN: Objection.</p> <p>13 A.</p> <p>14 MR. GUIDO: Counsel, what's the basis of</p> <p>15 your objection?</p> <p>16 MR. SOHN: You've asked it five times and</p> <p>17 you have got five minutes to go on this deposition,</p> <p>18 and I'm thinking that maybe you have something else</p> <p>19 you want to cover. You can ask this one for the next</p> <p>20 five minutes. That's fine, but you tend to ask the</p> <p>21 same questions over and over again and if you don't</p> <p>22 like the answer -- he's answered it five times.</p> <p>23 MR. GUIDO: You can just say asked and</p> <p>24 answered.</p> <p>25 MR. SOHN: I actually said objection,</p>	<p>1 T. Beloreshki - Direct</p> <p>2 THE VIDEOGRAPHER: We have used 5 hours,</p> <p>3 58 minutes. Excuse me. We have used 6 hours.</p> <p>4 MR. GUIDO: Let's take a break.</p> <p>5 THE VIDEOGRAPHER: The time is 6:58.</p> <p>6 We're going off the record.</p> <p>7 (Whereupon, a recess is taken.)</p> <p>8 MR. GUIDO: This is BP 4.</p> <p>9 (Whereupon, Exhibit Prowse Beloreshki-19</p> <p>10 is marked for identification by the reporter.)</p> <p>11 MR. GUIDO: This is 5.</p> <p>12 (Whereupon, Exhibit Prowse Beloreshki-20</p> <p>13 is marked for identification by the reporter.)</p> <p>14 THE VIDEOGRAPHER: The time is 7:06.</p> <p>15 We're back on the record.</p> <p>16 BY MR. GUIDO:</p> <p>17 Q. Will you take a look at your expert report</p> <p>18 in the Pet Quarters and turn to Page 22?</p> <p>19 A. You mean the February 19 or the March 19</p> <p>20 report?</p> <p>21 Q. I said the expert report. Not the</p> <p>22 rebuttal expert report. February 19. Page 22.</p> <p>23 A. Yes.</p> <p>24 Q. You see that that chart in the middle of</p> <p>25 the page shows five regressions?</p>
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<p>1 T. Beloreshki - Direct</p> <p>2 which is shorter.</p> <p>3 A. I have no idea what's happening.</p> <p>4 Q. I understand that in many different ways.</p> <p>5 Let's take a look at the regressions that</p> <p>6 you performed on the earlier time frame, which is the</p> <p>7 March 1st through April 30th, 2001.</p> <p>8 MR. GUIDO: I would like to have marked as</p> <p>9 exhibit next number a document that has been marked</p> <p>10 as BP6, Tab Reg G.</p> <p>11 Reg 1. Excuse me.</p> <p>12 I would like to have a document that we've</p> <p>13 extracted from BP6 and it is Reg 2.</p> <p>14 (Whereupon, Exhibit Prowse Beloreshki-16</p> <p>15 is marked for identification by the reporter.)</p> <p>16 (Whereupon, Exhibit Prowse Beloreshki-17</p> <p>17 is marked for identification by the reporter.)</p> <p>18 MR. GUIDO: BP Reg 2 and it's exhibit next</p> <p>19 number.</p> <p>20 The next one BP6 Reg 3.</p> <p>21 (Whereupon, Exhibit Prowse Beloreshki-18</p> <p>22 is marked for identification by the reporter.)</p> <p>23 MR. SOHN: I don't know if you have a lot</p> <p>24 of questions planned, but you're out of time.</p> <p>25 MR. GUIDO: Have we used seven hours?</p>	<p>1 T. Beloreshki - Direct</p> <p>2 A. Yes.</p> <p>3 Q. One of the regressions is number of net</p> <p>4 daily trades transacted by respondents?</p> <p>5 A. Number 5. Yes.</p> <p>6 Q. Why did you include it in the Pet Quarters</p> <p>7 report but exclude it from the Sedona report?</p> <p>8 A. It was not excluded from the analysis we</p> <p>9 did in Sedona.</p> <p>10 Q. Well, it doesn't state it in the text?</p> <p>11 A. Correct. It is not in the body of the</p> <p>12 report.</p> <p>13 Q. Okay. Thank you.</p> <p>14 MR. GUIDO: I've marked as Exhibits 16</p> <p>15 through 20 the regression analyses that you did.</p> <p>16 Would the court reporter please provide</p> <p>17 the witness with the copies.</p> <p>18 Q. Those have T statistics on them, and I</p> <p>19 want to direct your attention to 20, the very last</p> <p>20 one. See the T statistic there?</p> <p>21 MR. SOHN: Is there another copy?</p> <p>22 This is 20.</p> <p>23 MR. GUIDO: Yes. Exhibit 20.</p> <p>24 Q. See the T statistic on -- 2.42?</p> <p>25 A. I do.</p>

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<p style="text-align: right;">Page 270</p> <p>1 T. Beloreshki - Direct</p> <p>2 Q. The X variable, the last one under T stat?</p> <p>3 A. I do.</p> <p>4 Q. What do the other T stats refer to?</p> <p>5 A. The T statistics in the first row refers</p> <p>6 to the intersect, and the other two refer to the two</p> <p>7 independent variables.</p> <p>8 Q. What are the independent variables?</p> <p>9 A. I can't tell from this page.</p> <p>10 Q. Well, do you remember what the independent</p> <p>11 variables were that you considered when you did the</p> <p>12 analysis?</p> <p>13 A. I don't know what analysis this page</p> <p>14 refers to.</p> <p>15 Q. This applies to old 11B, which is March 1</p> <p>16 through April 30th, 2001.</p> <p>17 A. Okay. In which case, looking at Exhibit</p> <p>18 15, that, in all likelihood, would be the regression</p> <p>19 with two independent variables: One is NASDAQ local</p> <p>20 transactions and one is daily shares transacted.</p> <p>21 Q. And that's the one that -- that you did</p> <p>22 for Exhibit 13B net daily sales transacted that you</p> <p>23 did not include in the body of your report.</p> <p>24 A. Actually, that is included in the report</p> <p>25 as part of Regression 4, and I take my statement back</p>	
<p style="text-align: right;">Page 271</p> <p>1 T. Beloreshki - Direct</p> <p>2 from the previous answer. Regression 4 did include</p> <p>3 exactly that variable in that shares transacted. It</p> <p>4 just included them also, with a view of the liquidity</p> <p>5 of the market. So it's net sales transacted --</p> <p>6 Q. I understand that, but regression Number 5</p> <p>7 -- okay. Regression Number 5 that you performed in</p> <p>8 13B, which is Exhibit Number 15, was not in the body</p> <p>9 of your expert report?</p> <p>10 A. That would be correct.</p> <p>11 MR. GUIDO: No further questions.</p> <p>12 MR. SOHN: I have nothing.</p> <p>13 THE VIDEOGRAPHER: The time is 7:11 p.m.</p> <p>14 This is the end of Tape Number 6 and concludes our</p> <p>15 deposition.</p> <p>16 (Whereupon, the deposition is concluded at</p> <p>17 7:12 p.m.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	